

COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING & ZONING DIVISION

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# **Board of Zoning Appeals Staff Reports 2021**

**Wednesday January 20, 2020  
7:00 P.M.  
Virtual**

## 2020 Board of Zoning Appeals Call to Order: Roll Call

Name	Term Expiration
Mark Brown	03/13/2021
James Burkhardt	03/31/2021
Rhonda Zimmers	01/06/2022
Dori Gaier	05/11/2022
Denise Williams	08/02/2022
Charles Harris	03/26/2022
Matthew Ryan	08/11/2023
<b>Quorum - 4</b>	

**Agenda  
Board of Zoning Appeals  
Springfield, Ohio  
Wednesday, January 20, 2021  
7:00 P.M.**

**1. Call to Order**

**2. Roll Call**

**3. Approval of December 21, 2020 Meeting Minutes**

ACTION

**4. Swearing In of Witnesses**

ACTION

**5. Case #21-A-01**

DISCUSSION  
& ACTION

Request from James Payton for a conditional use permit for cargo containers at 1928, 1930, & 1936 Lagonda Ave. in a CC-2, Community Commercial Residence District

**6. Case #21-A-02**

DISCUSSION  
& ACTION

Request from James Payton for a variance from Chapter 1135.27 to allow for cargo containers more than 7% of the area of existing structures at 1928, 1930, & 1936 Lagonda Ave. in a CC-2, Community Commercial Residence District

**7. Case #21-A-03**

DISCUSSION  
& ACTION

Request from James Payton for a conditional use to allow for a cargo container at 1717 W North St. in a CI-1, Intensive Commercial District

**8. Case #21-A-04**

DISCUSSION  
& ACTION

Request from James Payton for a variance from Chapter 1135.27 to allow for cargo containers more than 7% of the area of existing structures at 1717 W North St. in a CI-1, Intensive Commercial Residence District

**9. Case #21-A-05**

DISCUSSION  
& ACTION

Request from James Payton for a variance from Chapter 1135.27 to allow cargo containers in a residential district at 228 & 232 Selma Rd. in a RS-8, Medium-Density, Single-Family Residence District

**10. Elect Chair and Vice-Chairperson for 2021**

DISCUSSION  
& ACTION

**11. Board Comments**

DISCUSSION

**12. Staff Comments**

DISCUSSION

**13. Adjourn – Next meeting is February 17, 2021**

ACTION

**Agenda Item # 5 & 6**  
**Case #20-A-01 & 20-A-02**  
**Conditional Use Permit &**  
**Variance**



## STAFF REPORT

TO: Board of Zoning Appeals

DATE: January 14, 2021

PREPARED BY: Stephen Thompson

SUBJECT: Case #21-A-01

**GENERAL INFORMATION:**

Applicant:

James D Payton, 1853 Winding Trail, Springfield, OH  
45503

Owner:

Vinlyn LLC, 2643 Casey Dr., Springfield, OH 45503

Purpose:

For a conditional use permit – cargo containers

Location:

1928, 1930, & 1936 Lagonda Ave

Size:

0.38 acre

### Existing Land Use and Zoning:

Automobile oriented, zoned CC-2

### Surrounding Land Use and Zoning:

North: Undeveloped, M-1

East: Commercial, CI-1

South: Commercial, CC-2

West: Commercial, RS-8

Applicable Regulations:

## Chapter 1172.05 Board of Zoning Appeals: Conditional Uses

Chapter 1135 Cargo Containers

File Date:

December 15, 2020

## BACKGROUND:

The applicant seeks a conditional use permit to keep cargo containers on site. The containers are used to store tires. The containers were placed without any permits and this began as a Code Enforcement complaint.

**ANALYSIS for Conditional Use:**

In considering an application for a conditional use, the Board shall give due regard to the nature and condition of all adjacent uses and structures, and the consistency therewith of the proposed use and development. Before authorizing a use as a conditional use, the Board shall review the facts and circumstances of each proposed conditional use in terms of the following standards and shall find adequate evidence showing that the proposed conditional use at the proposed location:

- (1) Would not be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of noise, smoke, odor, vibration, dust and dirt, cinders, noxious gases, glare and heat, fire and safety hazards, sewage wastes and pollution, transportation and traffic, aesthetic and psychological effects. The Board shall use and give recognition to those performance standards which are available in model codes or ordinances, or have been developed by planning, manufacturing, health, architectural and engineering organizations, and can be applied to the proposed use, to assist it in reaching a fair and objective decision;

*Staff Comment: It would not.*

- (2) Is in fact a conditional use as established under the provisions of this Springfield Zoning Code as eligible to be permitted in the district involved;

*Staff Comment: Yes.*

- (3) Will be harmonious with and in accordance with the general objectives, or with any specific objective of this Springfield Zoning Code;

*Staff Comment: Yes.*

- (4) Will be designed, constructed, operated and maintained as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that the use will not change the essential character of the same area;

*Staff Comment: Yes.*

- (5) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;

*Staff Comment: Yes.*

- (6) Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;

*Staff Comment: It will not.*

- (7) Will have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares. Upon authorizing a conditional use, the Board shall impose such requirements and conditions with respect to location, construction, maintenance and operation, in addition to those expressly stipulated in this Springfield Zoning Code for the particular conditional use, as the Board may deem necessary for the protection of adjacent properties and the public interest.

*Staff Comment: Yes.*

**RETURNED REPORTS FROM STAFF:**

Service Department:	Recommend approval
Building Inspections:	Recommend approval as long as they meet State requirements for the containers
Engineering Division:	Recommend approval
Fire Department:	Recommend approval
City Manager's Office:	Recommend approval

**STAFF RECOMMENDATION:**

Approval of the conditional use permit.

**ATTACHMENTS:**

1. Vicinity and zoning map
2. Application

**FOR OFFICE USE ONLY**Case #: 21-A-01402Date Received: 12/28/20Received by: JSApplication Fee: \$ 289

Review Type:

☐ Admin ☐ CPB ☒ BZA**GENERAL APPLICATION****A. PROJECT**1. Application Type & Project Description (*attach additional information, if necessary*):

— For a variance to permit cargo containers for safe and secure storage of tires for tire sales  
and service business.

2. Address of Subject Property: 1928, 1930 and 1936 Lagonda Ave., Springfield, OH 45503

340-07-00029-201-011

3. Parcel ID Number(s): 340-07-00029-201-0144. Full legal description attached? ☒ yes ☐ no5. Size of subject property: 159.5 feet by 123 feet by 170 feet6. Current Use of Property: Tire Sales and Service7. Current Zoning of Property: Commercial**B. APPLICANT**1. Applicant's Status (*attach proof of ownership or agent authorization*) ☒ Owner☐ Agent (*agent authorization required*) ☐ Tenant (*agent authorization required*)

2. Name of Applicant(s) or Contact Person(s): \_\_\_\_\_

Title: James D. PaytonCompany (if  
applicable): \_\_\_\_\_Mailing address: 1853 Winding TrailCity: , Springfield, State: , OH ZIP: 45503Telephone: ( 937 ) 591-0523 Fax: ( ) \_\_\_\_\_

Email \_\_\_\_\_

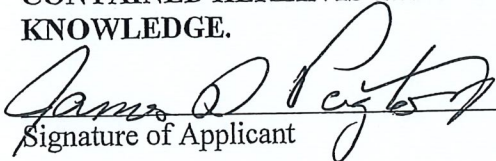
3. If the applicant is agent for the property owner:

Name of Owner (title holder): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

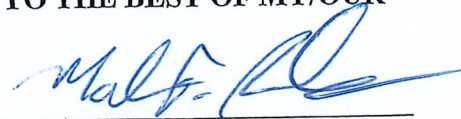
City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

**I/WE CERTIFY AND ACKNOWLEDGE THAT THE INFORMATION  
CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY/OUR  
KNOWLEDGE.**

  
Signature of Applicant

James D. Payton

Typed or printed name and title of applicant



Signature of Co-applicant

\*Vinlyn, LLC, By Mark F. Roberts

Typed or printed name of co-applicant

\*Land Contract Seller

State of Ohio

County of Clark

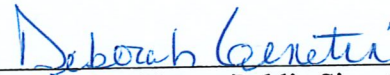
The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of  
Dec., 2020

by James D. Payton and Mark F. Roberts (name of person acknowledged).  
(for Vinlyn, LLC)

(seal)



Deborah Genetin  
Notary Public-State of Ohio  
My Commission Expires  
4-20-2025



Notary Public Signature

My commission expires: 4-20-2025



■ Planning & Zoning

CITY OF SPRINGFIELD  
COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING & ZONING DIVISION

BOARD OF ZONING APPEALS APPLICATION

Date: December 8, 2020

Property address: 1928, 1930 and 1936 Lagonda Ave., Springfield, OH 45503

Requested Action: ☒ Conditional Use  
☐ Interpretation of the Zoning Code or Map  
☐ Change of a Nonconforming Use  
☐ Other

Section of the Zoning code applicable: SCO 1101.03 (c) (3)

Purpose of this request, including the improvements or physical changes proposed if this application is approved:

Continued use of cargo containers in excess of 120 square feet for safe and secure storage of tires.

Please include the following exhibits:

**Exhibit A**

A scale drawing with the dimensions of the property including existing and proposed buildings and their distances from lot lines, parking spaces, and adjoining streets and alleys. Please see example site plan. Additional copies may be required as needed.

Basis for the requested action: Substantiate the reasons why you feel the Board of Zoning Appeals should grant your request. Be specific. Use the space that follows (attach additional pages if necessary).

The cargo storage containers in use provide a much safer and secure way to store tires in contrast with leaving them stacked in the open. Use of the containers prevents water accumulation, which will deter mosquito breeding. Storing the tires in the containers of the size (40 feet by 8 feet) currently in use is more efficient, deters theft, vandalism and enhances fire prevention.

Signature

*James D. Payton*

Applicant

*12-8-20*

Date

Please Print Name:

James D. Payton



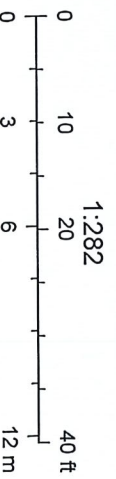
EXHIBIT A - Pg. 10 of 2  
(1936 Legends)

# Clark County Ohio GIS



December 3, 2020

\* Location of Centrist (40 by 8 Ft.)



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Clark County,

Clark County GIS Department  
Copyright 2020 Clark County Ohio GIS.



EXHIBIT A - Pg. 2 of 2  
(1928-1930 Lagonda)

Clark County Ohio GIS



\* Location of containers (yellow & A.)

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Clark County, Ohio

Clark County GIS Department  
Copyright 2020 Clark County Ohio GIS.





202000012588 08/31/2020 02:36 PM  
 Filed for Record in CLARK County, Ohio  
 Nancy Pence, Recorder Rec Fees: \$86.00  
 LC OR Vol 2177 Pgs 1179 - 1184

**APPROVED**  
 Clark County Tax Map

AUG 31 2020

☒ Legal Description  
☐ Survey Plat / Lotsplit  
☐ Subdivision / Annexation

# LAND INSTALLMENT CONTRACT

**THIS AGREEMENT**, executed in Springfield, Ohio the 31<sup>st</sup> day of Aug. 1, 2020 by **Vinlyn, LLC, an Ohio limited liability company**, whose post office address is 2643 Casey Dr., Springfield, OH 45503, herein designated as "Seller"; and by **James D. Payton**, whose post office address is 1853 Winding Trail, Springfield, OH 45503, herein designated as "Buyer" or "Buyers"; **NOW THEREFORE**,

The Seller agrees to sell and convey and the Buyer agrees to purchase and pay for, in accordance with all of the terms and conditions herein expressed, the following described real estate, which is commonly known as 1936 Lagonda Ave., Springfield, Ohio 45503:

Situated in the City of Springfield, County of Clark and State of Ohio and being more particularly described in Exhibit A attached hereto.

pp#s : 340-07-00029-201-014 and 340-07-00029-201-011.

Seller acquired title by deed recorded in Volume 1925, Page 1470, Official Records, Clark County, Ohio.

## A. CONSIDERATION AND PAYMENT

The contract price of the property conveyed	\$135,000.00
Buyer's down payment and credits	4,000.00
Principal balance owed	131,000 .00

The principal balance owed shall be paid in monthly installments of ONE THOUSAND THREE HUNDRED EIGHTY NINE AND 46/100 (\$1,389.46) DOLLARS beginning on the 1<sup>ST</sup> day of September 2020 , and continuing thereafter on the 1<sup>st</sup> day of each and every month until July 1, 2030 at which time the entire principal balance together with any unpaid interest shall be paid in full. The deferred payments shall bear interest at the rate of Five per cent (5%) per annum.

Buyer shall pay to Seller with each monthly payment an amount equal to one twelfth the annual real estate taxes. Seller shall hold said tax payments in escrow and make the semi annual payments of the same for Buyer.

The Buyer reserves the right to make additional principal payments at any time, and the Buyer further reserves the right to pay the entire balance of the purchase price at any time in advance of maturity; provided Buyer pays a pre-payment penalty equal to 5% of any additional principal payments. In the event Buyer makes additional principal payments, the monthly payment will remain the same. Seller will, once a year on December 1<sup>st</sup>, credit any additional principal payments for



purposes of recalculation the remaining amortization of the balance due.

#### **B. BUYER COVENANTS**

As a part of the consideration for this contract, the Buyer agrees as follows:

1. The Buyer will make the payments above specified when the same shall become due. If said payments are not made within FIVE (5) days of the due date, then a late charge of five per cent (5%) of the monthly payment will be applied.
2. The Buyer agrees to pay and hereby assume as Buyer's obligation, all taxes and assessments general or special, of every description whatsoever, that may be levied and assessed by authority of law upon said land or building, or on any part thereof, on or after the date of the execution of this contract, which may become a lien upon within described real estate. Buyer agrees to reimburse Seller in the event Seller pays said taxes, and authorizes Seller to deduct any such amount paid and not promptly reimbursed from any payment before crediting any balance remaining of such payment on principal.
3. The Buyer agrees to keep the buildings insured against loss by fire, tornado and windstorm and comprehensive coverage for not less than One Hundred Thirty One Thousand Dollars (\$131,000.00) with loss payable clause to Seller, Buyer, and Seller's mortgagee, if any, as their respective interest may appear, in a company approved by the Seller. Buyer will furnish copies of all such insurance policies to Seller.
4. The Buyer will pay for all utilities furnished to or consumed in the real estate above described and the improvements thereon.
5. The Buyer has examined the real estate and all of the improvements thereon, including the landscaping, and by the execution of this contract, the Buyer shall be deemed to have accepted such real estate, improvements and landscaping in their present condition, and it is agreed hereby that there is no warranty by the Seller as to the condition of the real estate or the improvements or the landscaping thereon.
6. The Buyer will keep the real estate and all of the improvements thereon in good repair at all times and in substantially the same condition as the same now are. The Buyer will pay for all repairs which at any time hereafter may become necessary. The Buyer shall make no alterations to the premises that require a building permit without the consent of Seller, which consent shall not be unreasonably withheld.
7. The Buyer shall not use the real estate or the improvements thereon for any illegal purpose during the term of this contract, or in such a manner as to cause a nuisance or annoyance to the neighborhood in which they are located; and the Buyer agrees to abide by all ordinances or statutes which at the present time have been or which may hereafter be adopted by the legislative body of any government having jurisdiction of the real estate above described, which shall in any manner affect the use and occupancy of the real estate above described.
8. The Buyer will indemnify and save harmless the Seller from all claims for damages to property and for personal injuries or death which may be asserted against the Seller by any person which shall arise out of the use and occupancy or which shall be caused by the condition of the real estate above described during the term of this contract, and the Buyer will defend, at the Buyer's expense, all of such



claims in any court action, and the Buyer will pay promptly any judgments which may be obtained by reason of any such claims. To that end, the Buyer will obtain and pay for a policy or policies of public liability insurance in a company or companies to be approved by the Seller, insuring the Seller and the Buyer against all such claims with liability limits of not less than \$100,000.00 per occurrence.

9. The Buyer will not assign this contract without the advanced written consent of the Seller, which consent shall not unreasonably be withheld, and if the Seller shall consent to an assignment, Buyer shall nevertheless remain liable for the performance of the obligations of this contract by the Buyer's assignee or by any subsequent assignee. If this contract is assigned without the Seller's written permission, the entire balance becomes immediately due and payable.

#### C. TERMINATION ON DEFAULT

Whenever the Buyer shall default in the performance of any of the covenants in this contract, and such default shall continue for thirty (30) days, the Seller shall have the privilege to notify the Buyer in writing, to correct such default within a period of ten (10) days after the date of such notification; which notification may be made by the Seller by depositing the same in the U.S. Mail addressed to the Buyer at their last known address, or by posting a copy thereof on the real estate above described, and the notification shall be a complete notification upon such mailing or posting. The failure of the Buyer to correct such default within the said ten (10) day period shall give the Seller the right forthwith to terminate this contract and to pursue any or all of the remedies hereinafter set forth, and no further notice of the termination of this contract by the Seller shall be required. In the event the Purchaser becomes bankrupt, makes an assignment for the benefit of creditors, or his interest in said premises should be seized by creditors or otherwise, then all of the installments and amounts remaining unpaid shall immediately become due and payable at the option of the Seller and in default of the payment of said entire balance of said Contract, Seller may terminate this agreement by written notice to the Purchaser, as required by law.

#### D. REMEDIES OF SELLER ON TERMINATION

Upon the termination of this contract by the Seller as hereinabove specified, for any reason whatsoever, it is hereby agreed by the Buyer that the Seller shall have any and all of the following remedies:

1. If the contract shall be terminated before the Buyer has paid a sum equal to or in excess of twenty percent (20%) of the purchase price, and before the Buyer has paid in accordance with the terms of the contract for a period of five (5) years or more from the date of the first payment, the Seller shall have the following remedies:

a.) The Buyer shall upon demand of the Seller forthwith relinquish possession of the above described real estate and shall redeliver possession thereof to the Seller.

b.) The Seller shall have the right to recover possession of the real estate above described by filing proceedings in forcible entry and detention or by filing such other action as now or hereafter exists for the purpose of recovering possession of real estate, and the Seller shall have the right to file any such action in any court which may have jurisdiction of the matter.

c.) At the Seller's option, the Seller may retain all payments made by the Buyer under this contract to the date of termination and under no circumstances shall the



Buyer be entitled to the return of any payments, regardless of the amounts which have been paid at that time, and all such payments shall be deemed reasonable compensation to the Seller for the occupancy of the premises by the Buyer, and such occupancy shall be deemed by the parties hereto to be of the value of the payment as made at the time of the termination of the contract.

d.) The right to file foreclosure proceeding under Section 2323.07 of the Revised Code of Ohio.

2. After the Buyer has paid a sum equal to or in excess of twenty percent (20%) towards the purchase price, the Seller may recover possession of the real estate herein described only by filing a proceeding for foreclosure and judicial sale of the foreclosed property as provided in Section 2323.07 of the Revised Code of Ohio, after the expiration of the periods provided in Paragraph C of this agreement.

#### E. NON-WAIVER

The failure of the Seller to exercise any of the rights under this contract given to the Seller upon breach of any of the terms and conditions hereby by the Buyer shall not be construed as a waiver of such terms and conditions or of any of the other terms and conditions of this contract, or of the right of the Seller to exercise any of such rights for subsequent breaches by the Buyer of any of the terms and conditions of this contract.

#### F. RESERVATIONS OF SELLER

The Seller hereby reserves the following rights:

1. To mortgage the above described real estate at any time hereafter, whether or not there is at the present time a mortgage thereon, and the Buyer agrees, that the Buyer's interest under this contract is subordinate to the rights of such present or future mortgages, and by the execution of this contract the Buyer waives the necessity of making any further agreements or waiver in writing to such effect in favor of any mortgagee; provided only that the Seller shall not be permitted hereby to mortgage the real estate for any amount in excess of the amount due from the Buyer to the Seller under this contract, nor shall the Seller be permitted hereby to further mortgage the real estate unless the terms of the mortgage shall require the Seller to repay the same in full at a time not later than the due date of the final payment from the Buyer to the Seller under this contract.

In the event of any default by the Seller in making any payment due under the terms of any mortgage placed on the real estate by the Seller, the Buyer shall have the right to make the payments due under this contract direct to the mortgagee or the Seller until such default on the part of the Seller has been corrected, and the Buyer shall receive credit on the purchase price of all payments.

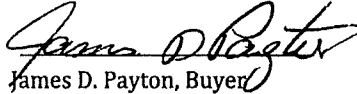
2. The Seller shall have the right to sell and convey the real estate above described and to assign the Seller's interest under this contract to the purchaser of the real estate, provided that such sale, conveyance and assignment shall be made expressly subject to the rights and interests of the Buyer in this contract and in their real estate above described.



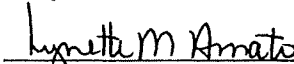
G. COVENANTS AND WARRANTIES OF THE SELLER

1. The Seller agrees upon the performance by the Buyer of all of the covenants set forth in this contract, as follows:
  - a.) The Buyer has taken possession of the premises above described on prior to the execution of this land installment contract.
  - b.) Upon payment of the full consideration, the Seller shall execute in conformity to law and will deliver to the Buyer a deed of general warranty, conveying the above described real estate to the Buyer, and warrant the same to be free and clear of all liens and encumbrances of any kind or nature whatsoever, but subject to legal highways, easements, restrictive covenants, and zoning laws, subject to taxes and assessments due and payable December 31, 2019, and thereafter, and subject to any liens and encumbrances against the above described real estate which shall exist because of any act of the Buyer.
  - c.) Within twenty (20) days after the execution of this contract by parties, the Seller agrees to cause a copy of this contract to be recorded in the Office of the Recorder of Clark County, Ohio, as provided in Section 5301.25 of the Revised Code of Ohio.
2. The Seller makes the following warranties:
  - a.) There are no encumbrances against the real estate except:  
NONE
  - b.) There are no pending orders of any public agency against the real estate, except:  
NONE

It is agreed that the usual custom in this locality is for the Buyer to conduct a search of the public records regarding the title to said premises at Buyer's own expense. The parties hereto have set their hands to duplicate originals on the day and year shown below.

  
James D. Payton, Buyer

Vinlyn, LLC, Seller

  
By: Lynette M. Amato, its Managing Member

STATE OF OHIO, COUNTY OF CLARK)

**BE IT REMEMBERED** that on this 31<sup>st</sup> day of August, 2020, before me, a Notary Public in and for said county and state, personally appeared the above James D. Payton, and Vinlyn, LLC, an Ohio limited liability company, By Lynette M. Amato, its Managing Member, the Buyer and Seller in the foregoing instrument, who being first duly sworn, acknowledged the execution of the foregoing instrument as their voluntary act and deed and the duly authorized and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned.

**IN TESTIMONY WHEREOF**, I have hereunto subscribed my name and affixed my official seal this 31<sup>st</sup> day of August, 2020.

  
NOTARY PUBLIC

This instrument was prepared by:  
Mark F. Roberts, Attorney for Seller  
20 S. Limestone St., Suite 120  
Springfield, Ohio 45502  
937-398-0658



MARK F. ROBERTS, Attorney At Law  
NOTARY PUBLIC, STATE OF OHIO  
My commission has no expiration date.  
Section 147.03 R.C.



202000012588  
BK 2177 PG 1184

## EXHIBIT A

Situate in the County of Clark, City of Springfield, and State of Ohio.  
Being all of Lot No. Seventy-Five (75) as the same is numbered and designated on a plat of lots laid out by Elizabeth E. Edwards, as recorded in Vol. 1, Page 146, Plat Records of Clark County, Ohio.

EXCEPTING therefrom the following described premises: Beginning at a point on the North line of Lagonda Avenue 67.5 feet Northeasterly from the Southwest corner of property formerly owned by Roy C. Conover, as recorded in Vol. 291, Page 325, Deed Records of Clark County, Ohio; thence with the North line of Lagonda Avenue 20.5 feet to a point; thence North 9 deg. 3' with the sectional line to a point on the South line of Lowell Street; thence Westerly with the South line of Lowell Street 22 ft. to a point; thence in a Southeasterly direction on a curve, the radius of which is 10 ft. 15.7 feet to a point; thence Southerly on a line parallel to and 12 feet distant from the East line of the herein described premises 5.4 feet to a point; thence in a Southwesterly direction on a curve, the radius of which is 10 feet, 8.5 feet to the beginning.

ALSO EXCEPTING therefrom the following described premises: Beginning at a point in the North line of Lagonda Ave. being N. 51 deg. 30' E.; 46.10 feet from the grantor's Southwest property corner; thence N. 10 deg. 45' 05" E., 22.55 feet; thence N. 3 deg. 45' W. 5.82 feet to a point of curvature; thence left on a curve 13.90 feet to a point in the South line of Lowell St. said curve having a chord N. 44 deg. 10' W., 12.70 feet; thence with the South line of Lowell St. S. 87 deg. 46' E., 16.22 feet to a point of curvature; thence right on a curve 15.70 feet to a point of tangency, said curve having a chord S. 42 deg. 30' 30" E. 14.20 feet; thence S. 2 deg. 45' W. 5.30 feet to a point of curvature; thence to the right on a curve 8.50 feet to a point of tangency in the North line of Lagonda Ave., said curve having a chord S. 27 deg. 07' 30" W., 8.26 feet; thence with said North line of S. 51 deg. 30' W., 21.40 feet to the place of beginning. Containing 0.010 acres, more or less.

## TRACT II:

Situate in the County of Clark, City of Springfield, and State of Ohio:  
Being all of Lot No. Seventy-Four (74) as the same is numbered and designated on a plat of lots laid out by Elizabeth E. Edwards, as recorded in Vol. 1, Page 146, Plat Records of Clark County, Ohio.

**LAW OFFICE OF  
MARK F. ROBERTS**

20 S. LIMESTONE ST., SUITE 120  
SPRINGFIELD, OH 45502  
937-398-0658  
937-323-3737 fax

---

December 9, 2020

Stephen Thompson  
Dept. of Development, Planning  
City of Springfield  
76 E. High St.  
Springfield, Ohio 45502

Re: James D. Payton

Dear Mr. Thompson:

Enclosed are applications for conditional use variances for properties owned by my client, James D. Payton, located on Selma Road, W. North Street and Lagonda Avenue. I am also enclosing a check for the application fees for all three.

Please let me know if you have any questions.

Very truly yours,



Mark F. Roberts,  
Attorney at Law  
mroberts@woh.rr.com

encl.



ALLEN AMBROSE F JR	740 VILLAGE RD	SPRINGFIELD, OH 45504
ALLEN AMBROSE F JR	740 VILLAGE RD	SPRINGFIELD, OH 45504
BALL ANNIS	58 NEWSOME DR	KERMIT, WV 25674
BOLGER TINA	1908 LAGONDA AVE	SPRINGFIELD, OH 45503
BOWSHIER DONALD O	3717 MUMPER RD	SPRINGFIELD, OH 45502
BOWSHIER DONALD O	1126 HENRY ST	SPRINGFIELD, OH 45503
BOWSHIER DONALD O	1134 HENRY ST	SPRINGFIELD, OH 45503
EASTERDAY JAMES W	1011 ALTA RD	SPRINGFIELD, OH 45503
HOWALD JACOB DRU	1084 N BELMONT AVE	SPRINGFIELD, OH 45503
K I C SPRINGFIELD INVESTMENTS LL	1520 14TH AVE	MIDDLETOWN, OH 45044
KTW INVESTMENTS LLC	13950 OLD OSBORN RD	SOUTH VIENNA, OH 45369
LUZA HERNAN J & CARISSA D	2806 E STATE ROUTE 29	MECHANICSBURG, OH 43078
MORRIS MARY	7310 STATE ROUTE 29	MECHANICSBURG, OH 43044
SHER DEN INC	1922 LAGONDA AVE	SPRINGFIELD, OH 45503
TMAC PROPERTIES LLC	336 S CLAIRMONT AVE	SPRINGFIELD, OH 45505
TOPRE AMERICA CORPORATION	1580 COUNTY RD 222	CULLMAN, AL 35057
VINLYN LLC	2643 CASEY DR	SPRINGFIELD, OH 45503
WILLIAMSON LINDA E	1909 LAGONDA AVE	SPRINGFIELD, OH 45503

## STAFF REPORT

TO: Board of Zoning Appeals

DATE: January 14, 2021

PREPARED BY: Stephen Thompson

SUBJECT: Case #21-A-02

### **GENERAL INFORMATION:**

Applicant: James D Payton, 1853 Winding Trail, Springfield, OH 45503

Owner: Vinlyn LLC, 2643 Casey Dr., Springfield, OH 45503

Purpose: For a variance from Chapter 1135.27(e) to allow existing cargo containers over 7% of the existing floor area to remain

Location: 1928, 1930, & 1936 Lagonda Ave

Size: 0.38 acre

Existing Land Use and Zoning: Automobile oriented, zoned CC-2

Surrounding Land Use and Zoning: North: Undeveloped, M-1  
East: Commercial, CI-1  
South: Commercial, CC-2  
West: Commercial, RS-8

Applicable Regulations: Chapter 1172.06 Variances  
Chapter 1135.27(e) Cargo Containers

File Date: December 15, 2020

### **BACKGROUND:**

The applicant seeks a variance to keep cargo containers on site that exceed 7% of the current building. There are multiple containers on site. The containers were placed without obtaining any permits.

Chapter 1135.27(e) states "Cargo containers exceeding 120 square feet are allowed in commercially zoned districts only as a conditional use. They may not be located in any setback required by zoning, nor be placed upon required parking, nor may their combined area exceed 7% of the floor area of the permanent structures on the site. They cannot be stacked."

## **ANALYSIS for Variance:**

The Board may grant a variance only where there exists a “practical difficulty” as defined by the courts in Ohio in established case law. The Ohio Supreme Court’s decision in Kisil v. City of Sandusky, (1984) 12 Ohio State 3d 30, is a land mark decision in establishing common law governing variances by distinguishing between “use” and “area variances.” Area variances involve an exception from such requirements as yard, lot, and height standards. The Supreme Court established that a practical difficulty must exist before an area variance can be granted.

Then subsequent to this case, in Duncan v. Village of Middlefield, (1986) 23 Ohio 3d 83, the Ohio Supreme Court more fully explained the practical difficulty standards. The factors to be considered and weighed in determining whether a property owner seeking a variance has encountered a practical difficulty in the use of his/her property include, but are not limited to:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

***Staff Comment: Yes.***

2. Whether the variance is substantial;

***Staff Comment: Yes.***

3. Whether the essential character of the neighborhood will be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

***Staff Comment: No.***

4. Whether the variance would adversely affect the delivery of government services (e.g., water, sewer);

***Staff Comment: No.***

5. Whether the property owner purchased the property with the knowledge of the zoning restrictions;

***Staff Comment: No.***

6. Whether the property owner’s predicament can be obviated through some method other than a variance; or

***Staff Comment: Yes. A permanent structure can built to store tires.***

7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

***Staff Comment: Yes.***

**RETURNED REPORTS FROM STAFF:**

Service/Engineering Department:	Recommend approval
Building Inspections:	Recommend approval as long as they meet State requirements for the containers
Engineering Division:	Recommend approval
Fire Department:	Recommend approval
City Manager's Office:	Recommend approval

**STAFF RECOMMENDATION:**

Approval of the variance.

**ATTACHMENTS:**

1. Vicinity and zoning map
2. Application



FOR OFFICE USE ONLY	
Case #:	<u>21-A-01402</u>
Date Received:	<u>12/28/20</u>
Received by:	<u>JS</u>
Application Fee:	\$ <u>289</u>
Review Type:	<input type="checkbox"/> Admin <input type="checkbox"/> CPB <input checked="" type="checkbox"/> BZA

## GENERAL APPLICATION

### A. PROJECT

- Application Type & Project Description (*attach additional information, if necessary*):  
— For a variance to permit cargo containers for safe and secure storage of tires for tire sales and service business. \_\_\_\_\_
- Address of Subject Property: 1928, 1930 and 1936 Lagonda Ave., Springfield, OH 45503
- Parcel ID Number(s): 340-07-00029-201-011  
340-07-00029-201-014
- Full legal description attached? ☒ yes ☐ no
- Size of subject property: 159.5 feet by 123 feet by 170 feet
- Current Use of Property: Tire Sales and Service
- Current Zoning of Property: Commercial

### B. APPLICANT

- Applicant's Status (*attach proof of ownership or agent authorization*) ☒ Owner  
☐ Agent (*agent authorization required*) ☐ Tenant (*agent authorization required*)

2. Name of Applicant(s) or Contact Person(s): \_\_\_\_\_

Title: James D. Payton

Company (if applicable): \_\_\_\_\_

Mailing address: 1853 Winding Trail

City: \_\_\_\_\_, Springfield, \_\_\_\_\_ State: \_\_\_\_\_, OH ZIP: 45503

Telephone: ( 937 ) 591-0523 Fax: ( ) \_\_\_\_\_

Email \_\_\_\_\_

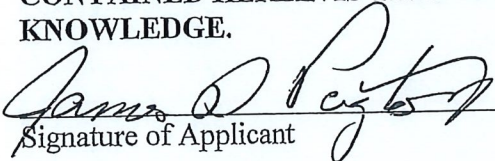
3. If the applicant is agent for the property owner:

Name of Owner (title holder): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

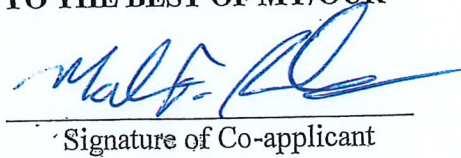
City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

**I/WE CERTIFY AND ACKNOWLEDGE THAT THE INFORMATION  
CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY/OUR  
KNOWLEDGE.**

  
Signature of Applicant

James D. Payton

Typed or printed name and title of applicant

  
Signature of Co-applicant

\*Vinlyn, LLC, By Mark F. Roberts

Typed or printed name of co-applicant

\*Land Contract Seller

State of Ohio

County of Clark

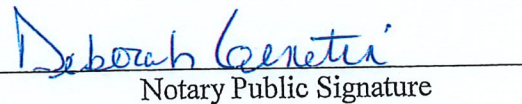
The foregoing instrument was acknowledged before me this 8th day of  
Dec., 2020

by James D. Payton and Mark F. Roberts (name of person acknowledged).  
(for Vinlyn, LLC)

(seal)



Deborah Genetin  
Notary Public-State of Ohio  
My Commission Expires  
4-20-2025

  
Notary Public Signature

My commission expires: 4-20-2025



■ Planning & Zoning

CITY OF SPRINGFIELD  
COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING & ZONING DIVISION

BOARD OF ZONING APPEALS APPLICATION

Date: December 8, 2020

Property address: 1928, 1930 and 1936 Lagonda Ave., Springfield, OH 45503

Requested Action: ☒ Conditional Use  
☐ Interpretation of the Zoning Code or Map  
☐ Change of a Nonconforming Use  
☐ Other

Section of the Zoning code applicable: SCO 1101.03 (c) (3)

Purpose of this request, including the improvements or physical changes proposed if this application is approved:

Continued use of cargo containers in excess of 120 square feet for safe and secure storage of tires.

Please include the following exhibits:

**Exhibit A**

A scale drawing with the dimensions of the property including existing and proposed buildings and their distances from lot lines, parking spaces, and adjoining streets and alleys. Please see example site plan. Additional copies may be required as needed.

Basis for the requested action: Substantiate the reasons why you feel the Board of Zoning Appeals should grant your request. Be specific. Use the space that follows (attach additional pages if necessary).

The cargo storage containers in use provide a much safer and secure way to store tires in contrast with leaving them stacked in the open. Use of the containers prevents water accumulation, which will deter mosquito breeding. Storing the tires in the containers of the size (40 feet by 8 feet) currently in use is more efficient, deters theft, vandalism and enhances fire prevention.



Signature: \_\_\_\_\_

Applicant

Date

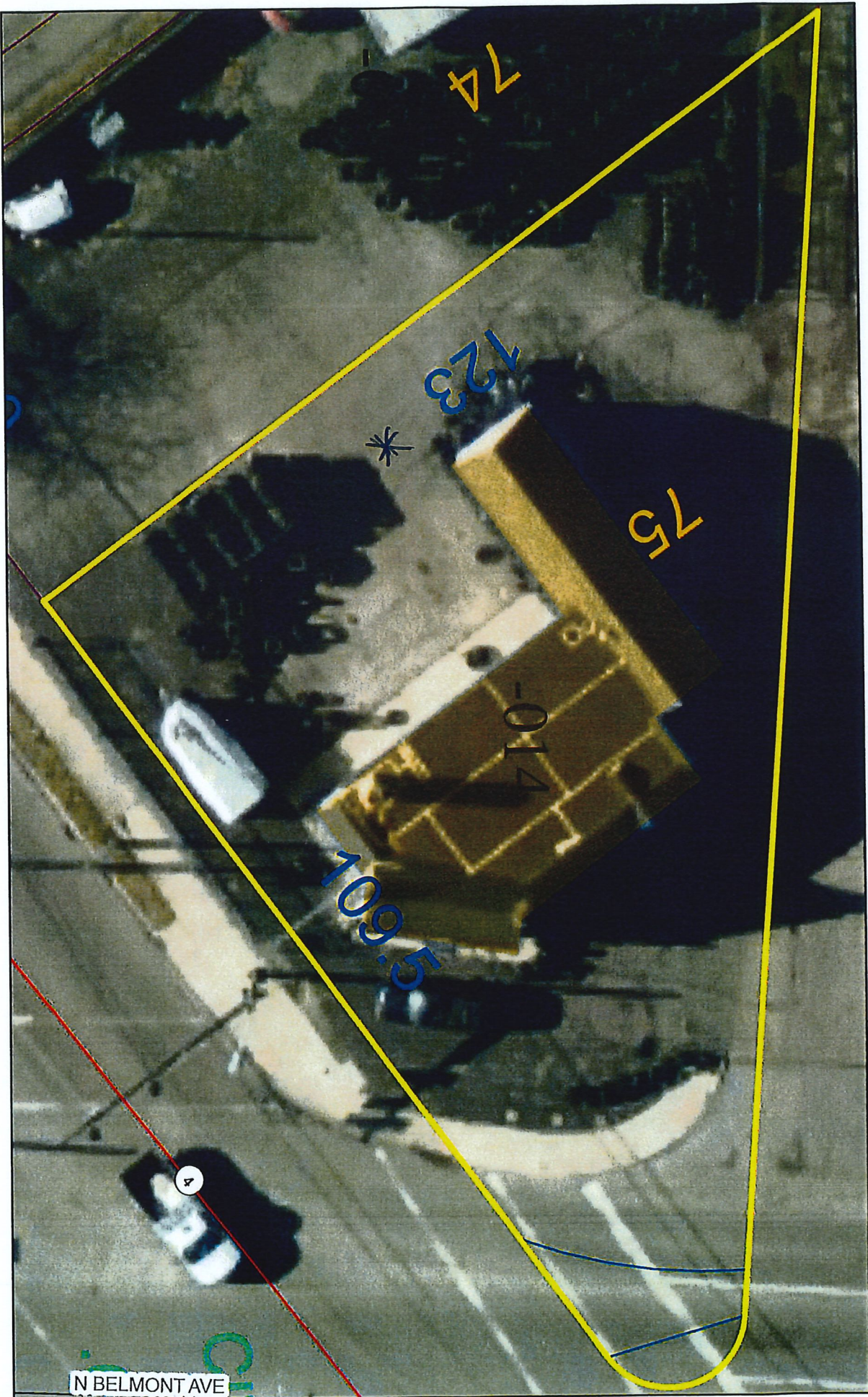
Please Print Name: \_\_\_\_\_

James D. Payton



EXHIBIT A - Pg. 10 of 2  
(1930 Legends)

# Clark County Ohio GIS



December 3, 2020

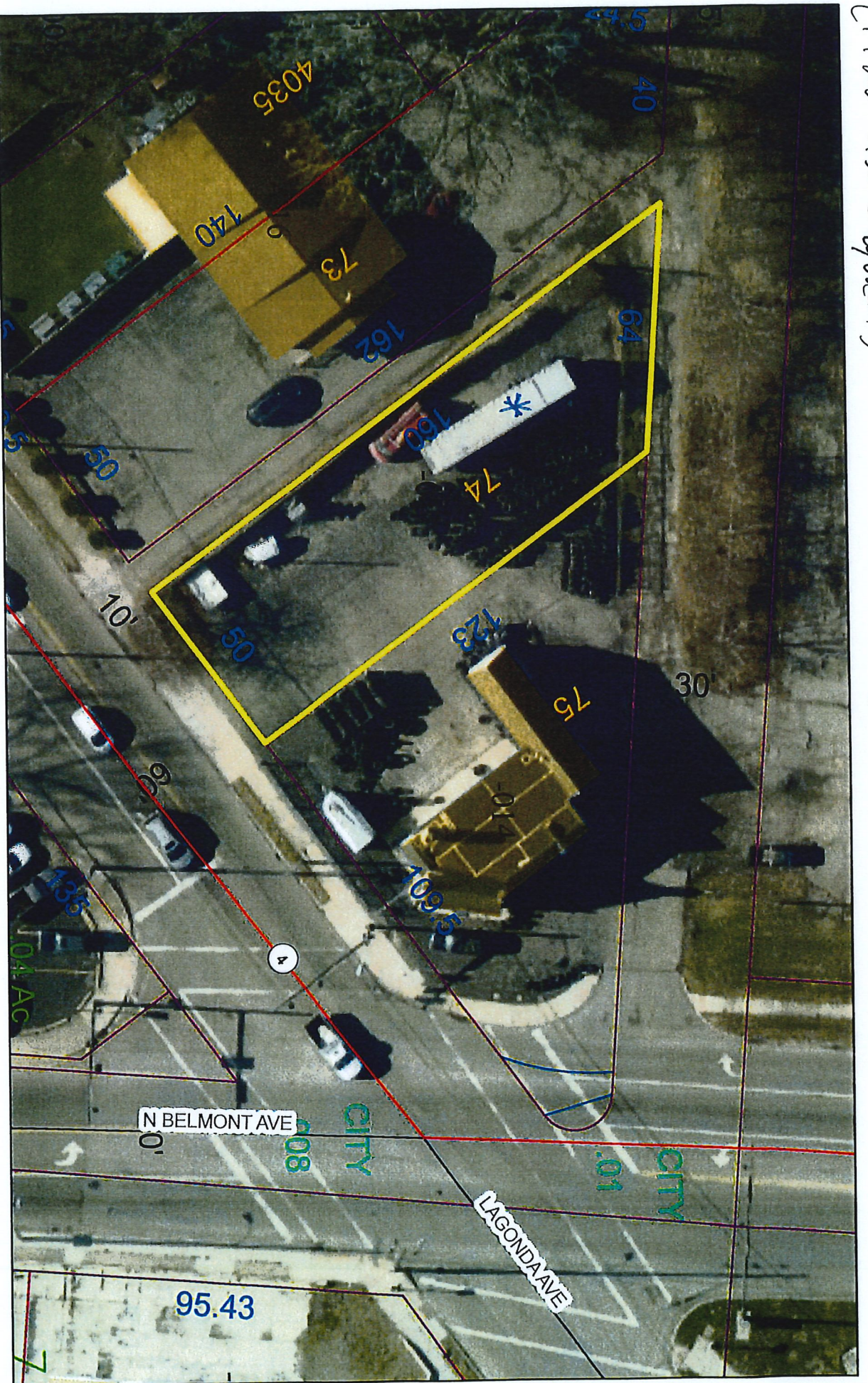
\* Location of Containist (40 by 8 Ft.)

Source: Esri, Maxar, GeoEye, Earthstar, GeoGraphics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Clark County, Ohio



EXHIBIT A - PG. 2 of 2  
(1928-1930 Lagonda)

Clark County Ohio GIS



December 3, 2020

\* Location of containers (yohy 844)

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Clark County, Ohio

Clark County GIS Department  
Copyright 2020 Clark County Ohio GIS



**APPROVED**  
Clark County Tax Map

AUG 31 2020

☒ Legal Description  
☐ Survey Plat / Lotsplit  
☐ Subdivision / Annexation

LAND INSTALLMENT CONTRACT

**THIS AGREEMENT**, executed in Springfield, Ohio the 31<sup>st</sup> day of Aug., 2020 by Vinlyn, LLC, an Ohio limited liability company, whose post office address is 2643 Casey Dr., Springfield, OH 45503, herein designated as "Seller"; and by James D. Payton, whose post office address is 1853 Winding Trail, Springfield, OH 45503, herein designated as "Buyer" or "Buyers"; **NOW THEREFORE**,

The Seller agrees to sell and convey and the Buyer agrees to purchase and pay for, in accordance with all of the terms and conditions herein expressed, the following described real estate, which is commonly known as 1936 Lagonda Ave., Springfield, Ohio 45503:

Situated in the City of Springfield, County of Clark and State of Ohio and being more particularly described in Exhibit A attached hereto.

pp#s : 340-07-00029-201-014 and 340-07-00029-201-011.

Seller acquired title by deed recorded in Volume 1925, Page 1470, Official Records, Clark County, Ohio.

A. CONSIDERATION AND PAYMENT

The contract price of the property conveyed	\$135,000.00
Buyer's down payment and credits	4,000.00
Principal balance owed	131,000 .00

The principal balance owed shall be paid in monthly installments of ONE THOUSAND THREE HUNDRED EIGHTY NINE AND 46/100 (\$1,389.46) DOLLARS beginning on the 1<sup>st</sup> day of September 2020 , and continuing thereafter on the 1<sup>st</sup> day of each and every month until July 1, 2030 at which time the entire principal balance together with any unpaid interest shall be paid in full. The deferred payments shall bear interest at the rate of Five per cent (5%) per annum.

Buyer shall pay to Seller with each monthly payment an amount equal to one twelfth the annual real estate taxes. Seller shall hold said tax payments in escrow and make the semi annual payments of the same for Buyer.

The Buyer reserves the right to make additional principal payments at any time, and the Buyer further reserves the right to pay the entire balance of the purchase price at any time in advance of maturity; provided Buyer pays a pre-payment penalty equal to 5% of any additional principal payments. In the event Buyer makes additional principal payments, the monthly payment will remain the same. Seller will, once a year on December 1<sup>st</sup>, credit any additional principal payments for

purposes of recalculation the remaining amortization of the balance due.

#### **B. BUYER COVENANTS**

As a part of the consideration for this contract, the Buyer agrees as follows:

1. The Buyer will make the payments above specified when the same shall become due. If said payments are not made within FIVE (5) days of the due date, then a late charge of five per cent (5%) of the monthly payment will be applied.
2. The Buyer agrees to pay and hereby assume as Buyer's obligation, all taxes and assessments general or special, of every description whatsoever, that may be levied and assessed by authority of law upon said land or building, or on any part thereof, on or after the date of the execution of this contract, which may become a lien upon within described real estate. Buyer agrees to reimburse Seller in the event Seller pays said taxes, and authorizes Seller to deduct any such amount paid and not promptly reimbursed from any payment before crediting any balance remaining of such payment on principal.
3. The Buyer agrees to keep the buildings insured against loss by fire, tornado and windstorm and comprehensive coverage for not less than One Hundred Thirty One Thousand Dollars (\$131,000.00) with loss payable clause to Seller, Buyer, and Seller's mortgagee, if any, as their respective interest may appear, in a company approved by the Seller. Buyer will furnish copies of all such insurance policies to Seller.
4. The Buyer will pay for all utilities furnished to or consumed in the real estate above described and the improvements thereon.
5. The Buyer has examined the real estate and all of the improvements thereon, including the landscaping, and by the execution of this contract, the Buyer shall be deemed to have accepted such real estate, improvements and landscaping in their present condition, and it is agreed hereby that there is no warranty by the Seller as to the condition of the real estate or the improvements or the landscaping thereon.
6. The Buyer will keep the real estate and all of the improvements thereon in good repair at all times and in substantially the same condition as the same now are. The Buyer will pay for all repairs which at any time hereafter may become necessary. The Buyer shall make no alterations to the premises that require a building permit without the consent of Seller, which consent shall not be unreasonably withheld.
7. The Buyer shall not use the real estate or the improvements thereon for any illegal purpose during the term of this contract, or in such a manner as to cause a nuisance or annoyance to the neighborhood in which they are located; and the Buyer agrees to abide by all ordinances or statutes which at the present time have been or which may hereafter be adopted by the legislative body of any government having jurisdiction of the real estate above described, which shall in any manner affect the use and occupancy of the real estate above described.
8. The Buyer will indemnify and save harmless the Seller from all claims for damages to property and for personal injuries or death which may be asserted against the Seller by any person which shall arise out of the use and occupancy or which shall be caused by the condition of the real estate above described during the term of this contract, and the Buyer will defend, at the Buyer's expense, all of such

claims in any court action, and the Buyer will pay promptly any judgments which may be obtained by reason of any such claims. To that end, the Buyer will obtain and pay for a policy or policies of public liability insurance in a company or companies to be approved by the Seller, insuring the Seller and the Buyer against all such claims with liability limits of not less than \$100,000.00 per occurrence.

9. The Buyer will not assign this contract without the advanced written consent of the Seller, which consent shall not unreasonably be withheld, and if the Seller shall consent to an assignment, Buyer shall nevertheless remain liable for the performance of the obligations of this contract by the Buyer's assignee or by any subsequent assignee. If this contract is assigned without the Seller's written permission, the entire balance becomes immediately due and payable.

#### C. TERMINATION ON DEFAULT

Whenever the Buyer shall default in the performance of any of the covenants in this contract, and such default shall continue for thirty (30) days, the Seller shall have the privilege to notify the Buyer in writing, to correct such default within a period of ten (10) days after the date of such notification; which notification may be made by the Seller by depositing the same in the U.S. Mail addressed to the Buyer at their last known address, or by posting a copy thereof on the real estate above described, and the notification shall be a complete notification upon such mailing or posting. The failure of the Buyer to correct such default within the said ten (10) day period shall give the Seller the right forthwith to terminate this contract and to pursue any or all of the remedies hereinafter set forth, and no further notice of the termination of this contract by the Seller shall be required. In the event the Purchaser becomes bankrupt, makes an assignment for the benefit of creditors, or his interest in said premises should be seized by creditors or otherwise, then all of the installments and amounts remaining unpaid shall immediately become due and payable at the option of the Seller and in default of the payment of said entire balance of said Contract, Seller may terminate this agreement by written notice to the Purchaser, as required by law.

#### D. REMEDIES OF SELLER ON TERMINATION

Upon the termination of this contract by the Seller as hereinabove specified, for any reason whatsoever, it is hereby agreed by the Buyer that the Seller shall have any and all of the following remedies:

1. If the contract shall be terminated before the Buyer has paid a sum equal to or in excess of twenty percent (20%) of the purchase price, and before the Buyer has paid in accordance with the terms of the contract for a period of five (5) years or more from the date of the first payment, the Seller shall have the following remedies:

a.) The Buyer shall upon demand of the Seller forthwith relinquish possession of the above described real estate and shall redeliver possession thereof to the Seller.

b.) The Seller shall have the right to recover possession of the real estate above described by filing proceedings in forcible entry and detention or by filing such other action as now or hereafter exists for the purpose of recovering possession of real estate, and the Seller shall have the right to file any such action in any court which may have jurisdiction of the matter.

c.) At the Seller's option, the Seller may retain all payments made by the Buyer under this contract to the date of termination and under no circumstances shall the



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BK 2177 PG 1182

Buyer be entitled to the return of any payments, regardless of the amounts which have been paid at that time, and all such payments shall be deemed reasonable compensation to the Seller for the occupancy of the premises by the Buyer, and such occupancy shall be deemed by the parties hereto to be of the value of the payment as made at the time of the termination of the contract.

d.) The right to file foreclosure proceeding under Section 2323.07 of the Revised Code of Ohio.

2. After the Buyer has paid a sum equal to or in excess of twenty percent (20%) towards the purchase price, the Seller may recover possession of the real estate herein described only by filing a proceeding for foreclosure and judicial sale of the foreclosed property as provided in Section 2323.07 of the Revised Code of Ohio, after the expiration of the periods provided in Paragraph C of this agreement.

#### E. NON-WAIVER

The failure of the Seller to exercise any of the rights under this contract given to the Seller upon breach of any of the terms and conditions hereby by the Buyer shall not be construed as a waiver of such terms and conditions or of any of the other terms and conditions of this contract, or of the right of the Seller to exercise any of such rights for subsequent breaches by the Buyer of any of the terms and conditions of this contract.

#### F. RESERVATIONS OF SELLER

The Seller hereby reserves the following rights:

1. To mortgage the above described real estate at any time hereafter, whether or not there is at the present time a mortgage thereon, and the Buyer agrees, that the Buyer's interest under this contract is subordinate to the rights of such present or future mortgages, and by the execution of this contract the Buyer waives the necessity of making any further agreements or waiver in writing to such effect in favor of any mortgagee; provided only that the Seller shall not be permitted hereby to mortgage the real estate for any amount in excess of the amount due from the Buyer to the Seller under this contract, nor shall the Seller be permitted hereby to further mortgage the real estate unless the terms of the mortgage shall require the Seller to repay the same in full at a time not later than the due date of the final payment from the Buyer to the Seller under this contract.

In the event of any default by the Seller in making any payment due under the terms of any mortgage placed on the real estate by the Seller, the Buyer shall have the right to make the payments due under this contract direct to the mortgagee or the Seller until such default on the part of the Seller has been corrected, and the Buyer shall receive credit on the purchase price of all payments.

2. The Seller shall have the right to sell and convey the real estate above described and to assign the Seller's interest under this contract to the purchaser of the real estate, provided that such sale, conveyance and assignment shall be made expressly subject to the rights and interests of the Buyer in this contract and in their real estate above described.



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# G. COVENANTS AND WARRANTIES OF THE SELLER

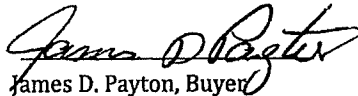
1. The Seller agrees upon the performance by the Buyer of all of the covenants set forth in this contract, as follows:

- a.) The Buyer has taken possession of the premises above described on prior to the execution of this land installment contract.
- b.) Upon payment of the full consideration, the Seller shall execute in conformity to law and will deliver to the Buyer a deed of general warranty, conveying the above described real estate to the Buyer, and warrant the same to be free and clear of all liens and encumbrances of any kind or nature whatsoever, but subject to legal highways, easements, restrictive covenants, and zoning laws, subject to taxes and assessments due and payable December 31, 2019, and thereafter, and subject to any liens and encumbrances against the above described real estate which shall exist because of any act of the Buyer.
- c.) Within twenty (20) days after the execution of this contract by parties, the Seller agrees to cause a copy of this contract to be recorded in the Office of the Recorder of Clark County, Ohio, as provided in Section 5301.25 of the Revised Code of Ohio.

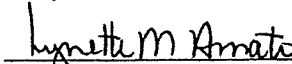
2. The Seller makes the following warranties:

- a.) There are no encumbrances against the real estate except:  
NONE
- b.) There are no pending orders of any public agency against the real estate, except:  
NONE

It is agreed that the usual custom in this locality is for the Buyer to conduct a search of the public records regarding the title to said premises at Buyer's own expense. The parties hereto have set their hands to duplicate originals on the day and year shown below.

  
James D. Payton, Buyer

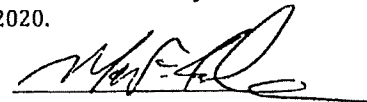
Vinlyn, LLC, Seller

  
By: Lynette M. Amato, its Managing Member

STATE OF OHIO, COUNTY OF CLARK)

**BE IT REMEMBERED** that on this 31<sup>st</sup> day of August, 2020, before me, a Notary Public in and for said county and state, personally appeared the above James D. Payton, and Vinlyn, LLC, an Ohio limited liability company, By Lynette M. Amato, its Managing Member, the Buyer and Seller in the foregoing instrument, who being first duly sworn, acknowledged the execution of the foregoing instrument as their voluntary act and deed and the duly authorized and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned.

**IN TESTIMONY WHEREOF** I have hereunto subscribed my name and affixed my official seal this 31<sup>st</sup> day of August, 2020.

  
NOTARY PUBLIC

This instrument was prepared by:  
Mark F. Roberts, Attorney for Seller  
20 S. Limestone St., Suite 120  
Springfield, Ohio 45502  
937-398-0658



MARK F. ROBERTS, Attorney At Law  
NOTARY PUBLIC, STATE OF OHIO  
My commission has no expiration date.  
Section 147.03 R.C.



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BK 2177 PG 1184

## EXHIBIT A

Situate in the County of Clark, City of Springfield, and State of Ohio.  
Being all of Lot No. Seventy-Five (75) as the same is numbered and designated on a plat of lots laid out by Elizabeth E. Edwards, as recorded in Vol. 1, Page 146, Plat Records of Clark County, Ohio.

EXCEPTING therefrom the following described premises: Beginning at a point on the North line of Lagonda Avenue 67.5 feet Northeasterly from the Southwest corner of property formerly owned by Roy C. Conover, as recorded in Vol. 291, Page 325, Deed Records of Clark County, Ohio; thence with the North line of Lagonda Avenue 20.5 feet to a point; thence North 9 deg. 3' with the sectional line to a point on the South line of Lowell Street; thence Westerly with the South line of Lowell Street 22 ft. to a point; thence in a Southeasterly direction on a curve, the radius of which is 10 ft. 15.7 feet to a point; thence Southerly on a line parallel to and 12 feet distant from the East line of the herein described premises 5.4 feet to a point; thence in a Southwesterly direction on a curve, the radius of which is 10 feet, 8.5 feet to the beginning.

ALSO EXCEPTING therefrom the following described premises: Beginning at a point in the North line of Lagonda Ave. being N. 51 deg. 30' E.; 46.10 feet from the grantor's Southwest property corner; thence N. 10 deg. 45' 05" E., 22.55 feet; thence N. 3 deg. 45' W. 5.82 feet to a point of curvature; thence left on a curve 13.90 feet to a point in the South line of Lowell St. said curve having a chord N. 44 deg. 10' W., 12.70 feet; thence with the South line of Lowell St. S. 87 deg. 46' E., 16.22 feet to a point of curvature; thence right on a curve 15.70 feet to a point of tangency, said curve having a chord S. 42 deg. 30' 30" E. 14.20 feet; thence S. 2 deg. 45' W. 5.30 feet to a point of curvature; thence to the right on a curve 8.50 feet to a point of tangency in the North line of Lagonda Ave., said curve having a chord S. 27 deg. 07' 30" W., 8.26 feet; thence with said North line of S. 51 deg. 30' W., 21.40 feet to the place of beginning. Containing 0.010 acres, more or less.

### TRACT II:

Situate in the County of Clark, City of Springfield, and State of Ohio:  
Being all of Lot No. Seventy-Four (74) as the same is numbered and designated on a plat of lots laid out by Elizabeth E. Edwards, as recorded in Vol. 1, Page 146, Plat Records of Clark County, Ohio.



**LAW OFFICE OF  
MARK F. ROBERTS**

20 S. LIMESTONE ST., SUITE 120  
SPRINGFIELD, OH 45502  
937-398-0658  
937-323-3737 fax

---

December 9, 2020

Stephen Thompson  
Dept. of Development, Planning  
City of Springfield  
76 E. High St.  
Springfield, Ohio 45502

Re: James D. Payton

Dear Mr. Thompson:

Enclosed are applications for conditional use variances for properties owned by my client, James D. Payton, located on Selma Road, W. North Street and Lagonda Avenue. I am also enclosing a check for the application fees for all three.

Please let me know if you have any questions.

Very truly yours,



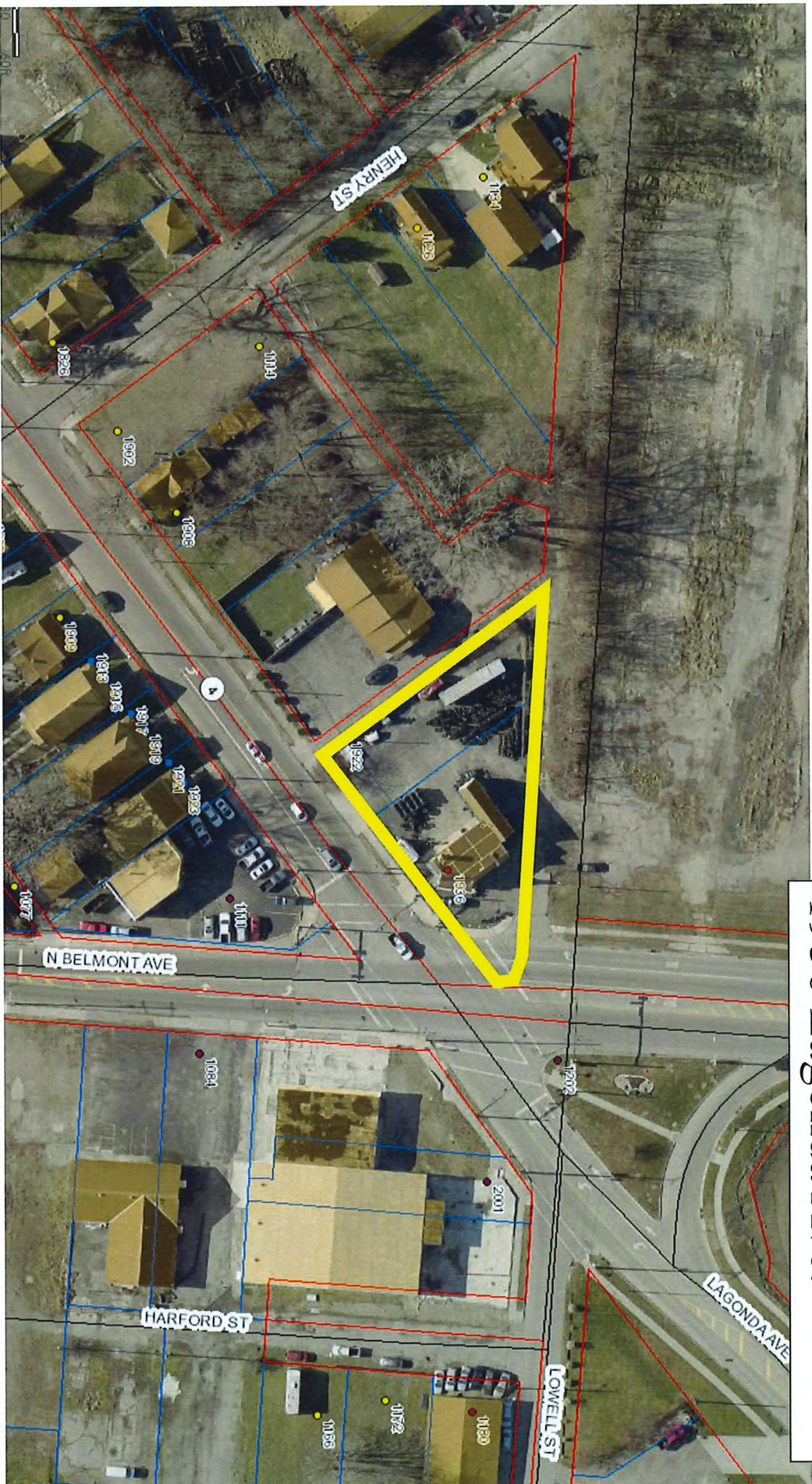
Mark F. Roberts,  
Attorney at Law  
mroberts@woh.rr.com

encl.

ALLEN AMBROSE F JR	740 VILLAGE RD	SPRINGFIELD, OH 45504
ALLEN AMBROSE F JR	740 VILLAGE RD	SPRINGFIELD, OH 45504
BALL ANNIS	58 NEWSOME DR	KERMIT, WV 25674
BOLGER TINA	1908 LAGONDA AVE	SPRINGFIELD, OH 45503
BOWSHIER DONALD O	3717 MUMPER RD	SPRINGFIELD, OH 45502
BOWSHIER DONALD O	1126 HENRY ST	SPRINGFIELD, OH 45503
BOWSHIER DONALD O	1134 HENRY ST	SPRINGFIELD, OH 45503
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LUZA HERNAN J & CARISSA D	2806 E STATE ROUTE 29	URBANA, OH 43078
MORRIS MARY	7310 STATE ROUTE 29	MECHANICSBURG, OH 43044
SHER DEN INC	1922 LAGONDA AVE	SPRINGFIELD, OH 45503
TMAC PROPERTIES LLC	336 S CLAIRMONT AVE	SPRINGFIELD, OH 45505
TOPRE AMERICA CORPORATION	1580 COUNTY RD 222	CULLMAN, AL 35057
VINLYN LLC	2643 CASEY DR	SPRINGFIELD, OH 45503
WILLIAMSON LINDA E	1909 LAGONDA AVE	SPRINGFIELD, OH 45503

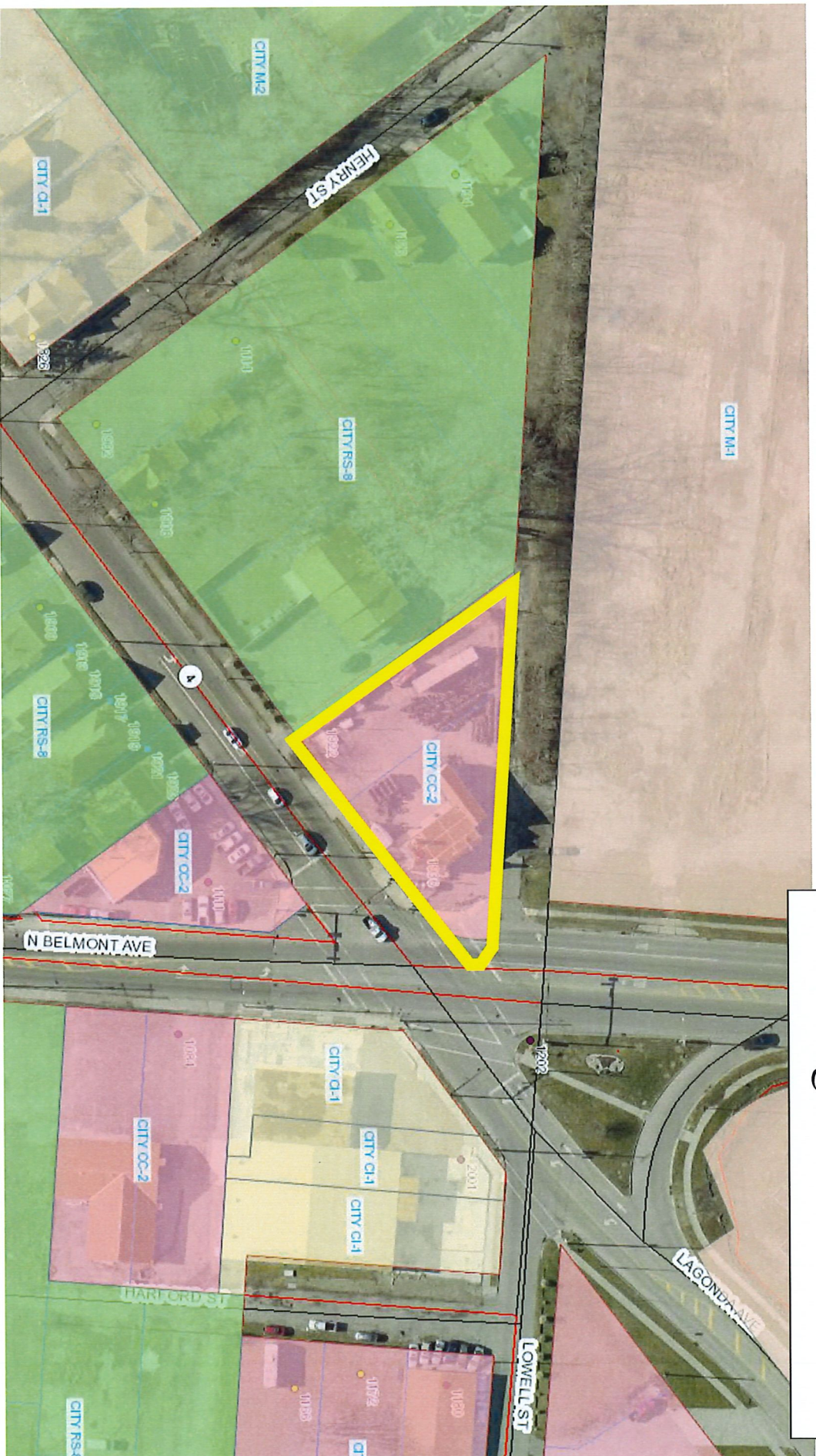


#21-A-01 & 02  
1936 Lagonda Ave.





#21-A-01 & 02  
1936 Lagonda Ave.



**Agenda Item # 7 & 8**  
**Case #20-A-03 & 20-A-04**  
**Conditional Use Permit &**  
**Variance**

## STAFF REPORT

TO: Board of Zoning Appeals

DATE: January 14, 2021

PREPARED BY: Stephen Thompson

SUBJECT: Case #21-A-03

### **GENERAL INFORMATION:**

Applicant: James D Payton, 1853 Winding Trail, Springfield, OH 45503

Owner: Vinlyn LLC, 2643 Casey Dr., Springfield, OH 45503

Purpose: For a conditional use permit – cargo containers

Location: 1717 W North St.

Size: 0.21 acre

Existing Land Use and Zoning: Automobile oriented, zoned CI-1

Surrounding Land Use and Zoning: North: Residential, RS-5  
East: Commercial, CI-1  
South: Commercial, CI-1  
West: Commercial, CI-1

Applicable Regulations: Chapter 1172.05 Board of Zoning Appeals: Conditional Uses  
Chapter 1135 Cargo Containers

File Date: December 15, 2020

### **BACKGROUND:**

The applicant seeks a conditional use permit to keep cargo containers on site. The containers are used to store tires. The containers were placed without any permits and this began as a Code Enforcement complaint.

### **ANALYSIS for Conditional Use:**

In considering an application for a conditional use, the Board shall give due regard to the nature and condition of all adjacent uses and structures, and the consistency therewith of the proposed use and development. Before authorizing a use as a conditional use, the Board shall review the facts and circumstances of each proposed conditional use in terms of the following standards and shall find adequate evidence showing that the proposed conditional use at the proposed location:



- (1) Would not be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of noise, smoke, odor, vibration, dust and dirt, cinders, noxious gases, glare and heat, fire and safety hazards, sewage wastes and pollution, transportation and traffic, aesthetic and psychological effects. The Board shall use and give recognition to those performance standards which are available in model codes or ordinances, or have been developed by planning, manufacturing, health, architectural and engineering organizations, and can be applied to the proposed use, to assist it in reaching a fair and objective decision;

*Staff Comment: It would not.*

- (2) Is in fact a conditional use as established under the provisions of this Springfield Zoning Code as eligible to be permitted in the district involved;

*Staff Comment: Yes.*

- (3) Will be harmonious with and in accordance with the general objectives, or with any specific objective of this Springfield Zoning Code;

*Staff Comment: Yes.*

- (4) Will be designed, constructed, operated and maintained as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that the use will not change the essential character of the same area;

*Staff Comment: Yes.*

- (5) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;

*Staff Comment: Yes.*

- (6) Will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community;

*Staff Comment: It will not.*

- (7) Will have vehicular approaches to the property, which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares. Upon authorizing a conditional use, the Board shall impose such requirements and conditions with respect to location, construction, maintenance and operation, in addition to those expressly stipulated in this Springfield Zoning Code for the particular conditional use, as the Board may deem necessary for the protection of adjacent properties and the public interest.

*Staff Comment: Yes.*

**RETURNED REPORTS FROM STAFF:**

Service Department:	Recommend approval
Building Inspections:	Recommend approval as long as they meet State requirements for the containers
Engineering Division:	Recommend approval
Fire Department:	Recommend approval
City Manager's Office:	Recommend approval

**STAFF RECOMMENDATION:**

Approval of the conditional use permit.

**ATTACHMENTS:**

1. Vicinity and zoning map
2. Application

**FOR OFFICE USE ONLY**Case #: 21-A-03404Date Received: 12/28/20Received by: STApplication Fee: \$ 285

Review Type:

☐ Admin ☐ CPB ☒ BZA**GENERAL APPLICATION****A. PROJECT**1. Application Type & Project Description (*attach additional information, if necessary*):

— For a variance to permit cargo containers for safe and secure storage of tires for tire sales  
and service business.

2. Address of Subject Property: 1717 W. North St., Springfield, OH 455043. Parcel ID Number(s): 340-06-00011-424-0064. Full legal description attached? ☒ yes ☐ no5. Size of subject property: 78 feet by 34.3 feet by 53.5 feet by 53.38 feet by 76 feet6. Current Use of Property: Tire Sales and Service7. Current Zoning of Property: Commercial**B. APPLICANT**1. Applicant's Status (*attach proof of ownership or agent authorization*) ☒ Owner☐ Agent (*agent authorization required*) ☐ Tenant (*agent authorization required*)

2. Name of Applicant(s) or Contact Person(s): \_\_\_\_\_

Title: James D. Payton

Company (if applicable): \_\_\_\_\_

Mailing address: 1853 Winding TrailCity: , Springfield, State: , OH ZIP: 45503Telephone: ( 937 ) 591-0523 Fax: ( ) \_\_\_\_\_

Email \_\_\_\_\_

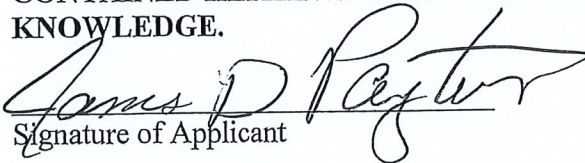
3. If the applicant is agent for the property owner:

Name of Owner (title holder): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

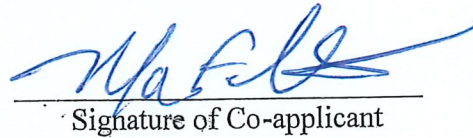
City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

**I/WE CERTIFY AND ACKNOWLEDGE THAT THE INFORMATION  
CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY/OUR  
KNOWLEDGE.**

  
Signature of Applicant

James D. Payton

Typed or printed name and title of applicant

  
Signature of Co-applicant

\*Vinlyn, LLC, By Mark F. Roberts

Typed or printed name of co-applicant

\*Land Contract Seller

State of Ohio

County of Clark

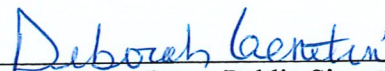
The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of  
Dec, 20 20

by James D. Payton and Mark F. Roberts (name of person acknowledged).  
(for Vinlyn, LLC)

(seal)



Deborah Genetin  
Notary Public-State of Ohio  
My Commission Expires  
4-20-2025



Notary Public Signature

My commission expires: 4-20-2025



■ Planning & Zoning

CITY OF SPRINGFIELD  
COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING & ZONING DIVISION

BOARD OF ZONING APPEALS APPLICATION

Date: December 8, 2020

Property address: 1717 W. North St., Springfield, OH 45504

Requested Action: ☒ Conditional Use  
☐ Interpretation of the Zoning Code or Map  
☐ Change of a Nonconforming Use  
☐ Other

Section of the Zoning code applicable: SCO 1135.27(e)

Purpose of this request, including the improvements or physical changes proposed if this application is approved:

Continued use of cargo containers in excess of 120 square feet for safe and secure storage of tires.

Please include the following exhibits:

**Exhibit A**

A scale drawing with the dimensions of the property including existing and proposed buildings and their distances from lot lines, parking spaces, and adjoining streets and alleys. Please see example site plan. Additional copies may be required as needed.

Basis for the requested action: Substantiate the reasons why you feel the Board of Zoning Appeals should grant your request. Be specific. Use the space that follows (attach additional pages if necessary).

The cargo storage containers in use provide a much safer and secure way to store tires in contrast with leaving them stacked in the open. Use of the containers prevents water accumulation, which will deter mosquito breeding. Storing the tires in the containers of the size (40 feet by 8 feet) currently in use is more efficient, deters theft, vandalism and enhances fire prevention.



Signature

Applicant

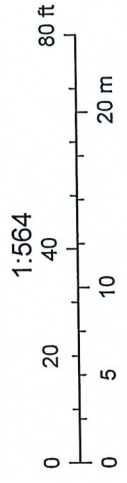
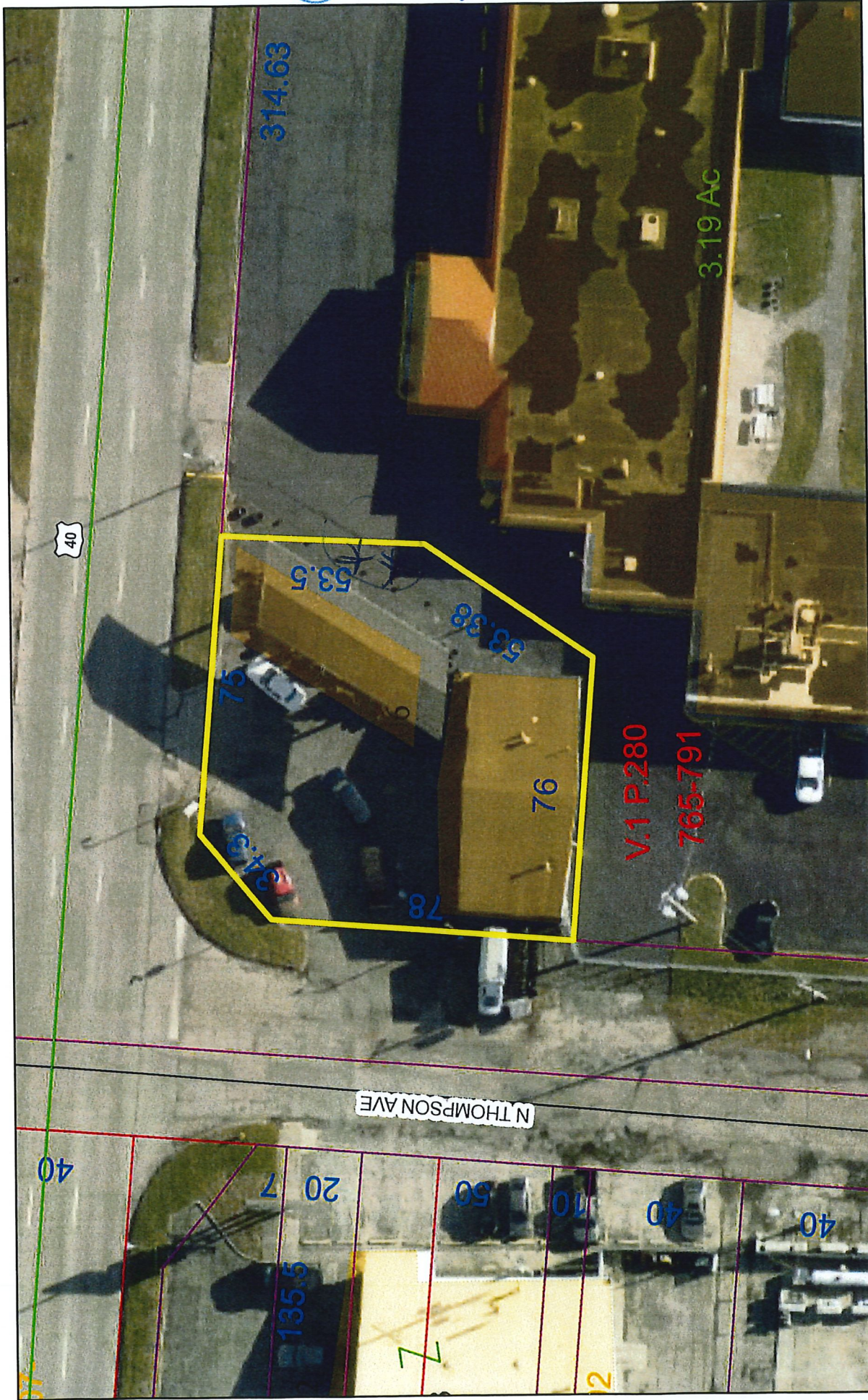
Date

Please Print Name:

James D. Payton

EXHIBIT A -

\* location of 40 By 8ft. containers



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Clark County,

Clark County GIS Department  
Copyright 2020 Clark County Ohio GIS.

December 3, 2020



APPROVED  
Clark County Tax Map

AUG 31 2020

*MP*  
☒ Legal Description  
☐ Survey Plat / Lot Split  
☐ Subdivision / Annexation

LAND INSTALLMENT CONTRACT

**THIS AGREEMENT**, executed in Springfield, Ohio the 31<sup>st</sup> day of August, 2020 by **Vinlyn, LLC, an Ohio limited liability company**, whose post office address is 2643 Casey Dr., Springfield, OH 45503, herein designated as "Seller"; and by **James D. Payton**, whose post office address is 1853 Winding Trail, Springfield, OH 45503, herein designated as "Buyer" or "Buyers"; **NOW THEREFORE**,

The Seller agrees to sell and convey and the Buyer agrees to purchase and pay for, in accordance with all of the terms and conditions herein expressed, the following described real estate, which is commonly known as 1717 W. North St., Springfield, Ohio 45504:

Situated in the City of Springfield, County of Clark and State of Ohio and being more particularly described in Exhibit A attached hereto.  
pp# 340-06-00011-424 -006.

Seller acquired title by deed recorded in Volume 1925, Page 1472, Official Records, Clark County, Ohio.

A. CONSIDERATION AND PAYMENT

The contract price of the property conveyed	\$115,000.00
Buyer's down payment and credits	4,000.00
Principal balance owed	111,000.00

The principal balance owed shall be paid in monthly installments of ONE THOUSAND ONE HUNDRED SEVENTY SEVEN AND 33/100 (\$1,177.33) DOLLARS beginning on the 1<sup>ST</sup> day of September 2020, and continuing thereafter on the 1<sup>st</sup> day of each and every month until July 1, 2030 at which time the entire principal balance together with any unpaid interest shall be paid in full. The deferred payments shall bear interest at the rate of Five per cent (5%) per annum.

Buyer shall pay to Seller with each monthly payment an amount equal to one twelfth the annual real estate taxes. Seller shall hold said tax payments in escrow and make the semi annual payments of the same for Buyer.

The Buyer reserves the right to make additional principal payments at any time, and the Buyer further reserves the right to pay the entire balance of the purchase price at any time in advance of maturity; provided Buyer pays a pre-payment penalty equal to 5% of any additional principal payments. In the event Buyer makes additional principal payments, the monthly payment will remain the same. Seller will, once a year on December 1<sup>st</sup>, credit any additional principal payments for

1

MARK ROBERTS  
HOLD

purposes of recalculation the remaining amortization of the balance due.

#### **B. BUYER COVENANTS**

As a part of the consideration for this contract, the Buyer agrees as follows:

1. The Buyer will make the payments above specified when the same shall become due. If said payments are not made within FIVE (5) days of the due date, then a late charge of five per cent (5%) of the monthly payment will be applied.
2. The Buyer agrees to pay and hereby assume as Buyer's obligation, all taxes and assessments general or special, of every description whatsoever, that may be levied and assessed by authority of law upon said land or building, or on any part thereof, on or after the date of the execution of this contract, which may become a lien upon within described real estate. Buyer agrees to reimburse Seller in the event Seller pays said taxes, and authorizes Seller to deduct any such amount paid and not promptly reimbursed from any payment before crediting any balance remaining of such payment on principal.
3. The Buyer agrees to keep the buildings insured against loss by fire, tornado and windstorm and comprehensive coverage for not less than One Hundred Eleven Thousand Dollars (\$111,000.00) with loss payable clause to Seller, Buyer, and Seller's mortgagee, if any, as their respective interest may appear, in a company approved by the Seller. Buyer will furnish copies of all such insurance policies to Seller.
4. The Buyer will pay for all utilities furnished to or consumed in the real estate above described and the improvements thereon.
5. The Buyer has examined the real estate and all of the improvements thereon, including the landscaping, and by the execution of this contract, the Buyer shall be deemed to have accepted such real estate, improvements and landscaping in their present condition, and it is agreed hereby that there is no warranty by the Seller as to the condition of the real estate or the improvements or the landscaping thereon.
6. The Buyer will keep the real estate and all of the improvements thereon in good repair at all times and in substantially the same condition as the same now are. The Buyer will pay for all repairs which at any time hereafter may become necessary. The Buyer shall make no alterations to the premises that require a building permit without the consent of Seller, which consent shall not be unreasonably withheld.
7. The Buyer shall not use the real estate or the improvements thereon for any illegal purpose during the term of this contract, or in such a manner as to cause a nuisance or annoyance to the neighborhood in which they are located; and the Buyer agrees to abide by all ordinances or statutes which at the present time have been or which may hereafter be adopted by the legislative body of any government having jurisdiction of the real estate above described, which shall in any manner affect the use and occupancy of the real estate above described.
8. The Buyer will indemnify and save harmless the Seller from all claims for damages to property and for personal injuries or death which may be asserted against the Seller by any person which shall arise out of the use and occupancy or which shall be caused by the condition of the real estate above described during the term of this contract, and the Buyer will defend, at the Buyer's expense, all of such



claims in any court action, and the Buyer will pay promptly any judgments which may be obtained by reason of any such claims. To that end, the Buyer will obtain and pay for a policy or policies of public liability insurance in a company or companies to be approved by the Seller, insuring the Seller and the Buyer against all such claims with liability limits of not less than \$100,000.00 per occurrence.

9. The Buyer will not assign this contract without the advanced written consent of the Seller, which consent shall not unreasonably be withheld, and if the Seller shall consent to an assignment, Buyer shall nevertheless remain liable for the performance of the obligations of this contract by the Buyer's assignee or by any subsequent assignee. If this contract is assigned without the Seller's written permission, the entire balance becomes immediately due and payable.

#### C. TERMINATION ON DEFAULT

Whenever the Buyer shall default in the performance of any of the covenants in this contract, and such default shall continue for thirty (30) days, the Seller shall have the privilege to notify the Buyer in writing, to correct such default within a period of ten (10) days after the date of such notification; which notification may be made by the Seller by depositing the same in the U.S. Mail addressed to the Buyer at their last known address, or by posting a copy thereof on the real estate above described, and the notification shall be a complete notification upon such mailing or posting. The failure of the Buyer to correct such default within the said ten (10) day period shall give the Seller the right forthwith to terminate this contract and to pursue any or all of the remedies hereinafter set forth, and no further notice of the termination of this contract by the Seller shall be required. In the event the Purchaser becomes bankrupt, makes an assignment for the benefit of creditors, or his interest in said premises should be seized by creditors or otherwise, then all of the installments and amounts remaining unpaid shall immediately become due and payable at the option of the Seller and in default of the payment of said entire balance of said Contract, Seller may terminate this agreement by written notice to the Purchaser, as required by law.

#### D. REMEDIES OF SELLER ON TERMINATION

Upon the termination of this contract by the Seller as hereinabove specified, for any reason whatsoever, it is hereby agreed by the Buyer that the Seller shall have any and all of the following remedies:

1. If the contract shall be terminated before the Buyer has paid a sum equal to or in excess of twenty percent (20%) of the purchase price, and before the Buyer has paid in accordance with the terms of the contract for a period of five (5) years or more from the date of the first payment, the Seller shall have the following remedies:

a.) The Buyer shall upon demand of the Seller forthwith relinquish possession of the above described real estate and shall redeliver possession thereof to the Seller.

b.) The Seller shall have the right to recover possession of the real estate above described by filing proceedings in forcible entry and detention or by filing such other action as now or hereafter exists for the purpose of recovering possession of real estate, and the Seller shall have the right to file any such action in any court which may have jurisdiction of the matter.

c.) At the Seller's option, the Seller may retain all payments made by the Buyer under this contract to the date of termination and under no circumstances shall the





Buyer be entitled to the return of any payments, regardless of the amounts which have been paid at that time, and all such payments shall be deemed reasonable compensation to the Seller for the occupancy of the premises by the Buyer, and such occupancy shall be deemed by the parties hereto to be of the value of the payment as made at the time of the termination of the contract.

d.) The right to file foreclosure proceeding under Section 2323.07 of the Revised Code of Ohio.

2. After the Buyer has paid a sum equal to or in excess of twenty percent (20%) towards the purchase price, the Seller may recover possession of the real estate herein described only by filing a proceeding for foreclosure and judicial sale of the foreclosed property as provided in Section 2323.07 of the Revised Code of Ohio, after the expiration of the periods provided in Paragraph C of this agreement.

#### E. NON-WAIVER

The failure of the Seller to exercise any of the rights under this contract given to the Seller upon breach of any of the terms and conditions hereby by the Buyer shall not be construed as a waiver of such terms and conditions or of any of the other terms and conditions of this contract, or of the right of the Seller to exercise any of such rights for subsequent breaches by the Buyer of any of the terms and conditions of this contract.

#### F. RESERVATIONS OF SELLER

The Seller hereby reserves the following rights:

1. To mortgage the above described real estate at any time hereafter, whether or not there is at the present time a mortgage thereon, and the Buyer agrees, that the Buyer's interest under this contract is subordinate to the rights of such present or future mortgages, and by the execution of this contract the Buyer waives the necessity of making any further agreements or waiver in writing to such effect in favor of any mortgagee; provided only that the Seller shall not be permitted hereby to mortgage the real estate for any amount in excess of the amount due from the Buyer to the Seller under this contract, nor shall the Seller be permitted hereby to further mortgage the real estate unless the terms of the mortgage shall require the Seller to repay the same in full at a time not later than the due date of the final payment from the Buyer to the Seller under this contract.

In the event of any default by the Seller in making any payment due under the terms of any mortgage placed on the real estate by the Seller, the Buyer shall have the right to make the payments due under this contract direct to the mortgagee or the Seller until such default on the part of the Seller has been corrected, and the Buyer shall receive credit on the purchase price of all payments.

2. The Seller shall have the right to sell and convey the real estate above described and to assign the Seller's interest under this contract to the purchaser of the real estate, provided that such sale, conveyance and assignment shall be made expressly subject to the rights and interests of the Buyer in this contract and in their real estate above described.



G. COVENANTS AND WARRANTIES OF THE SELLER

1. The Seller agrees upon the performance by the Buyer of all of the covenants set forth in this contract, as follows:

a.) The Buyer has taken possession of the premises above described on prior to the execution of this land installment contract.

b.) Upon payment of the full consideration, the Seller shall execute in conformity to law and will deliver to the Buyer a deed of general warranty, conveying the above described real estate to the Buyer, and warrant the same to be free and clear of all liens and encumbrances of any kind or nature whatsoever, but subject to legal highways, easements, restrictive covenants, and zoning laws, subject to taxes and assessments due and payable December 31, 2019, and thereafter, and subject to any liens and encumbrances against the above described real estate which shall exist because of any act of the Buyer.

c.) Within twenty (20) days after the execution of this contract by parties, the Seller agrees to cause a copy of this contract to be recorded in the Office of the Recorder of Clark County, Ohio, as provided in Section 5301.25 of the Revised Code of Ohio.

2. The Seller makes the following warranties:

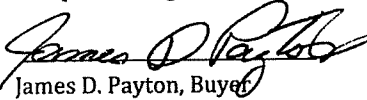
a.) There are no encumbrances against the real estate except:

NONE

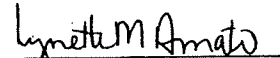
b.) There are no pending orders of any public agency against the real estate, except:

NONE

It is agreed that the usual custom in this locality is for the Buyer to conduct a search of the public records regarding the title to said premises at Buyer's own expense. The parties hereto have set their hands to duplicate originals on the day and year shown below.

  
James D. Payton, Buyer

Vinlyn, LLC, Seller




By: Lynette M. Amato, its Managing Member

STATE OF OHIO, COUNTY OF CLARK)

BE IT REMEMBERED that on this 31<sup>st</sup> day of August, 2020, before me, a Notary Public in and for said county and state, personally appeared the above James D. Payton, and Vinlyn, LLC, an Ohio limited liability company, By Lynette M. Amato, its Managing Member, the Buyer and Seller in the foregoing instrument, who being first duly sworn, acknowledged the execution of the foregoing instrument as their voluntary act and deed and the duly authorized and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal this 31<sup>st</sup> day of August, 2020.



NOTARY PUBLIC

This instrument was prepared by:  
Mark F. Roberts, Attorney for Seller  
20 S. Limestone St., Suite 120  
Springfield, Ohio 45502  
937-398-0658



MARK F. ROBERTS, Attorney At Law  
NOTARY PUBLIC, STATE OF OHIO  
My commission has no expiration date.  
Section 147.03 R.C.



202000012587  
BK 2177 PG 1178

## EXHIBIT A

Situated in the City of Springfield, County of Clark and State of Ohio, and bounded and described as follows:

Beginning at an iron pipe in the East line of Thompson Ave, said pipe being South 5 deg. 20' West, 80.50 feet from a point where the East line of Thompson Ave (produced north) intersects the center line of new US Route 40 (West North St); Thence South 5 deg. 20' West with East line of Thompson Ave, 78.00 feet to an iron pipe; Thence South 84 deg. 29' East, 76.00 feet to an iron pin; Thence north 32 deg. 37' East 53.38 feet to an iron pipe Thence North 5 deg. 31' East, 53.50 feet to an iron pipe in the South line of US Route 40 (West North St); Thence North 84 deg. 29' West along the South R/W line of US Routh 40 (West North St), 75.00 feet to an iron pipe; Thence South 53 deg. 31' West 34.40 feet to an iron pipe, the place of beginning of this survey. Containing an area of 0.21 acres. Together With an easement for ingress and egress to be used in common by the Grantees, their heirs and assigns, and the Grantors, their heirs and assigns, and their respective licensees and invitees, over the follow described real estate:

Beginning at an iron pipe at the Northeast corner of the above described property and in the south line of US Route 40 (West North St). Thence South 84 deg. 29' east along and South line of US Route 40 (West North St), 45.00 feet to a park in concrete gutter; Thence South 45 deg. 35' West, 69.91 feet to an iron pipe; Thence North 5 Deg. 31' East, 53.50 feet To an iron pipe, the place of beginning Containing an area of 0.027 Acres.

Subject to all easements and restrictions of record.

BUSH VICTORIA & LOWELL	209 N THOMPSON AVI	SPRINGFIELD, OH 45504
BUSH VICTORIA & LOWELL	209 N THOMPSON AVI	SPRINGFIELD, OH 45504
DE ANGELIS PROPERTIES LLC	2723 RENSSELAER ST	SPRINGFIELD, OH 45503
FREMONT PROPERTIES INC	4186 CORUNNA RD	FLINT, MI 48532
GEER INVESTMENT PROPERTIES LLC	PO BOX 163216	COLUMBUS, OH 43216
HENSLEY CANDID S	1708 W NORTH ST	SPRINGFIELD, OH 45504
HUSTED ENTERPRISES LLC	239 HEDGE DR	SPRINGFIELD, OH 45504
KOEHLER RICHARD E & TERESA K	765 STONECROFT DR	SPRINGFIELD, OH 45502
ORGAN PAUL J	1630 W NORTH ST	SPRINGFIELD, OH 45504
PHOENIX PROPERTIES GROUP LLC	PO BOX 178	SPRINGFIELD, OH 45501
RICE ERIC D	3645 CALHOUN DR	SPRINGFIELD, OH 45505
VINLYN LLC	2643 CASEY DR	SPRINGFIELD, OH 45503
WAVES OF GLORY CHRISTIAN MINISTRIE	1720 W NORTH ST	SPRINGFIELD, OH 45504
WILSON THOMAS W	2266 BAINTEA AVE	GROVE CITY, OH 43123



## STAFF REPORT

TO: Board of Zoning Appeals

DATE: January 14, 2021

PREPARED BY: Stephen Thompson

SUBJECT: Case #21-A-04

### **GENERAL INFORMATION:**

Applicant: James D Payton, 1853 Winding Trail, Springfield, OH 45503

Owner: Vinlyn LLC, 2643 Casey Dr., Springfield, OH 45503

Purpose: For a variance from Chapter 1135.27(e) to allow existing cargo containers over 7% of the existing floor area to remain

Location: 1717 W North St.

Size: 0.21 acre

Existing Land Use and Zoning: Automobile oriented, zoned CI-1

Surrounding Land Use and Zoning: North: Residential, RS-5  
East: Commercial, CI-1  
South: Commercial, CI-1  
West: Commercial, CI-1

Applicable Regulations: Chapter 1172.06 Variances  
Chapter 1135.27(e) Cargo Containers

File Date: December 15, 2020

### **BACKGROUND:**

The applicant seeks a variance to keep cargo containers on site that exceed 7% of the current building. There are multiple containers on site. The containers were placed without obtaining any permits.

Chapter 1135.27(e) states "Cargo containers exceeding 120 square feet are allowed in commercially zoned districts only as a conditional use. They may not be located in any setback required by zoning, nor be placed upon required parking, nor may their combined area exceed 7% of the floor area of the permanent structures on the site. They cannot be stacked."

## **ANALYSIS for Variance:**

The Board may grant a variance only where there exists a “practical difficulty” as defined by the courts in Ohio in established case law. The Ohio Supreme Court’s decision in Kisil v. City of Sandusky, (1984) 12 Ohio State 3d 30, is a land mark decision in establishing common law governing variances by distinguishing between “use” and “area variances.” Area variances involve an exception from such requirements as yard, lot, and height standards. The Supreme Court established that a practical difficulty must exist before an area variance can be granted.

Then subsequent to this case, in Duncan v. Village of Middlefield, (1986) 23 Ohio 3d 83, the Ohio Supreme Court more fully explained the practical difficulty standards. The factors to be considered and weighed in determining whether a property owner seeking a variance has encountered a practical difficulty in the use of his/her property include, but are not limited to:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

***Staff Comment: Yes.***

2. Whether the variance is substantial;

***Staff Comment: Yes.***

3. Whether the essential character of the neighborhood will be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

***Staff Comment: No.***

4. Whether the variance would adversely affect the delivery of government services (e.g., water, sewer);

***Staff Comment: No.***

5. Whether the property owner purchased the property with the knowledge of the zoning restrictions;

***Staff Comment: No.***

6. Whether the property owner’s predicament can be obviated through some method other than a variance; or

***Staff Comment: No.***

7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

***Staff Comment: Yes.***

**RETURNED REPORTS FROM STAFF:**

Service/Engineering Department:	Recommend approval
Building Inspections:	Recommend approval as long as they meet State requirements for the containers
Engineering Division:	Recommend approval
Fire Department:	Recommend approval
City Manager's Office:	Recommend approval

**STAFF RECOMMENDATION:**

Approval of the variance.

**ATTACHMENTS:**

1. Vicinity and zoning map
2. Application



FOR OFFICE USE ONLY	
Case #:	<u>21-4-03404</u>
Date Received:	<u>12/28/20</u>
Received by:	<u>ST</u>
Application Fee:	\$ <u>285</u>
Review Type:	
	<input type="checkbox"/> Admin <input type="checkbox"/> CPB <input checked="" type="checkbox"/> BZA

## GENERAL APPLICATION

### A. PROJECT

1. Application Type & Project Description (*attach additional information, if necessary*):  
— For a variance to permit cargo containers for safe and secure storage of tires for tire sales and service business.  
1717 W. North St., Springfield, OH 45504
2. Address of Subject Property: \_\_\_\_\_
3. Parcel ID Number(s): 340-06-00011-424-006
4. Full legal description attached? ☒ yes ☐ no
5. Size of subject property: 78 feet by 34.3 feet by 53.5 feet by 53.38 feet by 76 feet
6. Current Use of Property: Tire Sales and Service
7. Current Zoning of Property: Commercial

### B. APPLICANT

1. Applicant's Status (*attach proof of ownership or agent authorization*) ☒ Owner  
☐ Agent (*agent authorization required*) ☐ Tenant (*agent authorization required*)

2. Name of Applicant(s) or Contact Person(s): \_\_\_\_\_

Title: James D. Payton

Company (if applicable): \_\_\_\_\_

Mailing address: 1853 Winding Trail

City: \_\_\_\_\_, Springfield, \_\_\_\_\_ State: \_\_\_\_\_, OH ZIP: 45503

Telephone: ( 937 ) 591-0523 Fax: ( ) \_\_\_\_\_

Email \_\_\_\_\_

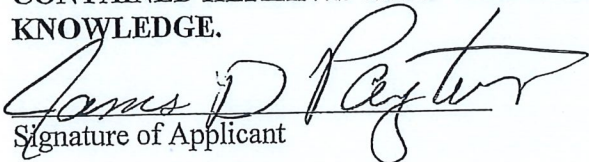
3. If the applicant is agent for the property owner:

Name of Owner (title holder): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

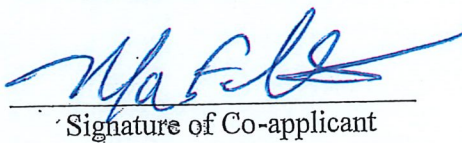
City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

**I/WE CERTIFY AND ACKNOWLEDGE THAT THE INFORMATION  
CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY/OUR  
KNOWLEDGE.**

  
Signature of Applicant

James D. Payton

Typed or printed name and title of applicant

  
Signature of Co-applicant

\*Vinlyn, LLC, By Mark F. Roberts

Typed or printed name of co-applicant

\*Land Contract Seller

State of Ohio

County of Clark

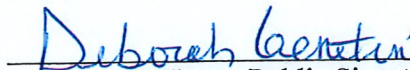
The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of  
Dec, 20 20

by James D. Payton and Mark F. Roberts (name of person acknowledged).  
(for Vinlyn, LLC)

(seal)



Deborah Genetin  
Notary Public-State of Ohio  
My Commission Expires  
4-20-2025

  
Notary Public Signature

My commission expires: 4-20-2025





■ Planning & Zoning

CITY OF SPRINGFIELD  
COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING & ZONING DIVISION

BOARD OF ZONING APPEALS APPLICATION

Date: December 8, 2020

Property address: 1717 W. North St., Springfield, OH 45504

Requested Action: ☒ Conditional Use  
☐ Interpretation of the Zoning Code or Map  
☐ Change of a Nonconforming Use  
☐ Other

Section of the Zoning code applicable: SCO 1135.27(e)

Purpose of this request, including the improvements or physical changes proposed if this application is approved:

Continued use of cargo containers in excess of 120 square feet for safe and secure storage of tires.

Please include the following exhibits:

**Exhibit A**

A scale drawing with the dimensions of the property including existing and proposed buildings and their distances from lot lines, parking spaces, and adjoining streets and alleys. Please see example site plan. Additional copies may be required as needed.

Basis for the requested action: Substantiate the reasons why you feel the Board of Zoning Appeals should grant your request. Be specific. Use the space that follows (attach additional pages if necessary).

The cargo storage containers in use provide a much safer and secure way to store tires in contrast with leaving them stacked in the open. Use of the containers prevents water accumulation, which will deter mosquito breeding. Storing the tires in the containers of the size (40 feet by 8 feet) currently in use is more efficient, deters theft, vandalism and enhances fire prevention.

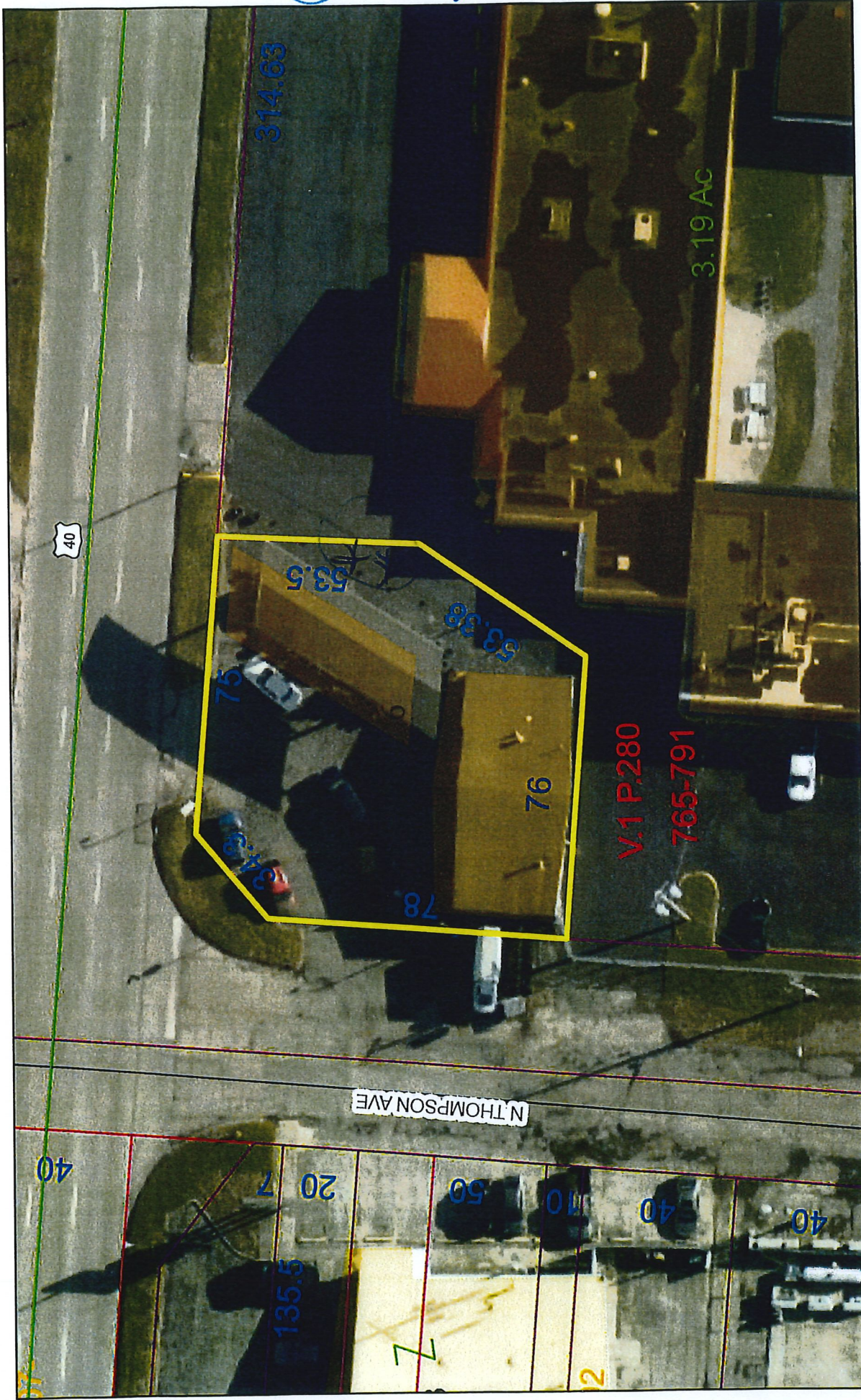
---

Signature: James D. Payton 12-8-20  
Applicant Date  
Please Print Name: James D. Payton



EXHIBIT A -

Location of 40 G4 8ft. Containers



December 3, 2020

1:564  
0 20 40 60 80 ft  
0 5 10 20 m

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Clark County, Ohio

Clark County GIS Department  
Copyright 2020 Clark County Ohio GIS.



**APPROVED**  
Clark County Tax Map

AUG 31 2020

☒ Legal Description  
☐ Survey Plat / Lotsplit  
☐ Subdivision / Annexation

LAND INSTALLMENT CONTRACT

THIS AGREEMENT, executed in Springfield, Ohio the 31<sup>st</sup> day of August, 2020 by Vinlyn, LLC, an Ohio limited liability company, whose post office address is 2643 Casey Dr., Springfield, OH 45503, herein designated as "Seller"; and by James D. Payton, whose post office address is 1853 Winding Trail, Springfield, OH 45503, herein designated as "Buyer" or "Buyers"; **NOW THEREFORE,**

The Seller agrees to sell and convey and the Buyer agrees to purchase and pay for, in accordance with all of the terms and conditions herein expressed, the following described real estate, which is commonly known as 1717 W. North St., Springfield, Ohio 45504:

Situated in the City of Springfield, County of Clark and State of Ohio and being more particularly described in Exhibit A attached hereto.

pp# 340-06-00011-424 -006.

Seller acquired title by deed recorded in Volume 1925, Page 1472, Official Records, Clark County, Ohio.

A. CONSIDERATION AND PAYMENT

The contract price of the property conveyed	\$115,000.00
Buyer's down payment and credits	4,000.00
Principal balance owed	111,000.00

The principal balance owed shall be paid in monthly installments of ONE THOUSAND ONE HUNDRED SEVENTY SEVEN AND 33/100 (\$1,177.33) DOLLARS beginning on the 1<sup>st</sup> day of September 2020, and continuing thereafter on the 1<sup>st</sup> day of each and every month until July 1, 2030 at which time the entire principal balance together with any unpaid interest shall be paid in full. The deferred payments shall bear interest at the rate of Five per cent (5%) per annum.

Buyer shall pay to Seller with each monthly payment an amount equal to one twelfth the annual real estate taxes. Seller shall hold said tax payments in escrow and make the semi annual payments of the same for Buyer.

The Buyer reserves the right to make additional principal payments at any time, and the Buyer further reserves the right to pay the entire balance of the purchase price at any time in advance of maturity; provided Buyer pays a pre-payment penalty equal to 5% of any additional principal payments. In the event Buyer makes additional principal payments, the monthly payment will remain the same. Seller will, once a year on December 1<sup>st</sup>, credit any additional principal payments for

1

MARK ROBERTS  
HOLD

purposes of recalculation the remaining amortization of the balance due.

#### **B. BUYER COVENANTS**

As a part of the consideration for this contract, the Buyer agrees as follows:

1. The Buyer will make the payments above specified when the same shall become due. If said payments are not made within FIVE (5) days of the due date, then a late charge of five per cent (5%) of the monthly payment will be applied.
2. The Buyer agrees to pay and hereby assume as Buyer's obligation, all taxes and assessments general or special, of every description whatsoever, that may be levied and assessed by authority of law upon said land or building, or on any part thereof, on or after the date of the execution of this contract, which may become a lien upon within described real estate. Buyer agrees to reimburse Seller in the event Seller pays said taxes, and authorizes Seller to deduct any such amount paid and not promptly reimbursed from any payment before crediting any balance remaining of such payment on principal.
3. The Buyer agrees to keep the buildings insured against loss by fire, tornado and windstorm and comprehensive coverage for not less than One Hundred Eleven Thousand Dollars (\$111,000.00) with loss payable clause to Seller, Buyer, and Seller's mortgagee, if any, as their respective interest may appear, in a company approved by the Seller. Buyer will furnish copies of all such insurance policies to Seller.
4. The Buyer will pay for all utilities furnished to or consumed in the real estate above described and the improvements thereon.
5. The Buyer has examined the real estate and all of the improvements thereon, including the landscaping, and by the execution of this contract, the Buyer shall be deemed to have accepted such real estate, improvements and landscaping in their present condition, and it is agreed hereby that there is no warranty by the Seller as to the condition of the real estate or the improvements or the landscaping thereon.
6. The Buyer will keep the real estate and all of the improvements thereon in good repair at all times and in substantially the same condition as the same now are. The Buyer will pay for all repairs which at any time hereafter may become necessary. The Buyer shall make no alterations to the premises that require a building permit without the consent of Seller, which consent shall not be unreasonably withheld.
7. The Buyer shall not use the real estate or the improvements thereon for any illegal purpose during the term of this contract, or in such a manner as to cause a nuisance or annoyance to the neighborhood in which they are located; and the Buyer agrees to abide by all ordinances or statutes which at the present time have been or which may hereafter be adopted by the legislative body of any government having jurisdiction of the real estate above described, which shall in any manner affect the use and occupancy of the real estate above described.
8. The Buyer will indemnify and save harmless the Seller from all claims for damages to property and for personal injuries or death which may be asserted against the Seller by any person which shall arise out of the use and occupancy or which shall be caused by the condition of the real estate above described during the term of this contract, and the Buyer will defend, at the Buyer's expense, all of such





claims in any court action, and the Buyer will pay promptly any judgments which may be obtained by reason of any such claims. To that end, the Buyer will obtain and pay for a policy or policies of public liability insurance in a company or companies to be approved by the Seller, insuring the Seller and the Buyer against all such claims with liability limits of not less than \$100,000.00 per occurrence.

9. The Buyer will not assign this contract without the advanced written consent of the Seller, which consent shall not unreasonably be withheld, and if the Seller shall consent to an assignment, Buyer shall nevertheless remain liable for the performance of the obligations of this contract by the Buyer's assignee or by any subsequent assignee. If this contract is assigned without the Seller's written permission, the entire balance becomes immediately due and payable.

#### C. TERMINATION ON DEFAULT

Whenever the Buyer shall default in the performance of any of the covenants in this contract, and such default shall continue for thirty (30) days, the Seller shall have the privilege to notify the Buyer in writing, to correct such default within a period of ten (10) days after the date of such notification; which notification may be made by the Seller by depositing the same in the U.S. Mail addressed to the Buyer at their last known address, or by posting a copy thereof on the real estate above described, and the notification shall be a complete notification upon such mailing or posting. The failure of the Buyer to correct such default within the said ten (10) day period shall give the Seller the right forthwith to terminate this contract and to pursue any or all of the remedies hereinafter set forth, and no further notice of the termination of this contract by the Seller shall be required. In the event the Purchaser becomes bankrupt, makes an assignment for the benefit of creditors, or his interest in said premises should be seized by creditors or otherwise, then all of the installments and amounts remaining unpaid shall immediately become due and payable at the option of the Seller and in default of the payment of said entire balance of said Contract, Seller may terminate this agreement by written notice to the Purchaser, as required by law.

#### D. REMEDIES OF SELLER ON TERMINATION

Upon the termination of this contract by the Seller as hereinabove specified, for any reason whatsoever, it is hereby agreed by the Buyer that the Seller shall have any and all of the following remedies:

1. If the contract shall be terminated before the Buyer has paid a sum equal to or in excess of twenty percent (20%) of the purchase price, and before the Buyer has paid in accordance with the terms of the contract for a period of five (5) years or more from the date of the first payment, the Seller shall have the following remedies:

a.) The Buyer shall upon demand of the Seller forthwith relinquish possession of the above described real estate and shall redeliver possession thereof to the Seller.

b.) The Seller shall have the right to recover possession of the real estate above described by filing proceedings in forcible entry and detention or by filing such other action as now or hereafter exists for the purpose of recovering possession of real estate, and the Seller shall have the right to file any such action in any court which may have jurisdiction of the matter.

c.) At the Seller's option, the Seller may retain all payments made by the Buyer under this contract to the date of termination and under no circumstances shall the



Buyer be entitled to the return of any payments, regardless of the amounts which have been paid at that time, and all such payments shall be deemed reasonable compensation to the Seller for the occupancy of the premises by the Buyer, and such occupancy shall be deemed by the parties hereto to be of the value of the payment as made at the time of the termination of the contract.

d.) The right to file foreclosure proceeding under Section 2323.07 of the Revised Code of Ohio.

2. After the Buyer has paid a sum equal to or in excess of twenty percent (20%) towards the purchase price, the Seller may recover possession of the real estate herein described only by filing a proceeding for foreclosure and judicial sale of the foreclosed property as provided in Section 2323.07 of the Revised Code of Ohio, after the expiration of the periods provided in Paragraph C of this agreement.

#### E. NON-WAIVER

The failure of the Seller to exercise any of the rights under this contract given to the Seller upon breach of any of the terms and conditions hereby by the Buyer shall not be construed as a waiver of such terms and conditions or of any of the other terms and conditions of this contract, or of the right of the Seller to exercise any of such rights for subsequent breaches by the Buyer of any of the terms and conditions of this contract.

#### F. RESERVATIONS OF SELLER

The Seller hereby reserves the following rights:

1. To mortgage the above described real estate at any time hereafter, whether or not there is at the present time a mortgage thereon, and the Buyer agrees, that the Buyer's interest under this contract is subordinate to the rights of such present or future mortgages, and by the execution of this contract the Buyer waives the necessity of making any further agreements or waiver in writing to such effect in favor of any mortgagee; provided only that the Seller shall not be permitted hereby to mortgage the real estate for any amount in excess of the amount due from the Buyer to the Seller under this contract, nor shall the Seller be permitted hereby to further mortgage the real estate unless the terms of the mortgage shall require the Seller to repay the same in full at a time not later than the due date of the final payment from the Buyer to the Seller under this contract.

In the event of any default by the Seller in making any payment due under the terms of any mortgage placed on the real estate by the Seller, the Buyer shall have the right to make the payments due under this contract direct to the mortgagee or the Seller until such default on the part of the Seller has been corrected, and the Buyer shall receive credit on the purchase price of all payments.

2. The Seller shall have the right to sell and convey the real estate above described and to assign the Seller's interest under this contract to the purchaser of the real estate, provided that such sale, conveyance and assignment shall be made expressly subject to the rights and interests of the Buyer in this contract and in their real estate above described.



202000012587  
BK 2177 PG 1177

# G. COVENANTS AND WARRANTIES OF THE SELLER

1. The Seller agrees upon the performance by the Buyer of all of the covenants set forth in this contract, as follows:

- a.) The Buyer has taken possession of the premises above described on prior to the execution of this land installment contract.
- b.) Upon payment of the full consideration, the Seller shall execute in conformity to law and will deliver to the Buyer a deed of general warranty, conveying the above described real estate to the Buyer, and warrant the same to be free and clear of all liens and encumbrances of any kind or nature whatsoever, but subject to legal highways, easements, restrictive covenants, and zoning laws, subject to taxes and assessments due and payable December 31, 2019, and thereafter, and subject to any liens and encumbrances against the above described real estate which shall exist because of any act of the Buyer.
- c.) Within twenty (20) days after the execution of this contract by parties, the Seller agrees to cause a copy of this contract to be recorded in the Office of the Recorder of Clark County, Ohio, as provided in Section 5301.25 of the Revised Code of Ohio.

2. The Seller makes the following warranties:

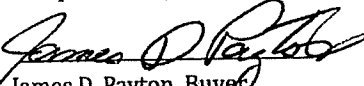
- a.) There are no encumbrances against the real estate except:

NONE

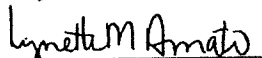
- b.) There are no pending orders of any public agency against the real estate, except:

NONE

It is agreed that the usual custom in this locality is for the Buyer to conduct a search of the public records regarding the title to said premises at Buyer's own expense. The parties hereto have set their hands to duplicate originals on the day and year shown below.

  
James D. Payton, Buyer

Vinlyn, LLC, Seller




By: Lynette M. Amato, its Managing Member

STATE OF OHIO, COUNTY OF CLARK

BE IT REMEMBERED that on this 31<sup>st</sup> day of August, 2020, before me, a Notary Public in and for said county and state, personally appeared the above James D. Payton, and Vinlyn, LLC, an Ohio limited liability company, By Lynette M. Amato, its Managing Member, the Buyer and Seller in the foregoing instrument, who being first duly sworn, acknowledged the execution of the foregoing instrument as their voluntary act and deed and the duly authorized and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal this 31<sup>st</sup> day of August, 2020.



NOTARY PUBLIC

This instrument was prepared by:  
Mark F. Roberts, Attorney for Seller  
20 S. Limestone St., Suite 120  
Springfield, Ohio 45502  
937-398-0658



MARK F. ROBERTS, Attorney At Law  
NOTARY PUBLIC, STATE OF OHIO  
My commission has no expiration date.  
Section 147.03 R.C.



202000012587  
BK 2177 PG 1178

## EXHIBIT A

Situated in the City of Springfield, County of Clark and State of Ohio, and bounded and described as follows:

Beginning at an iron pipe in the East line of Thompson Ave, said pipe being South 5 deg. 20' West, 80.50 feet from a point where the East line of Thompson Ave (produced north) intersects the center line of new US Route 40 (West North St); Thence South 5 deg. 20' West with East line of Thompson Ave, 78.00 feet to an iron pipe; Thence South 84 deg. 29' East, 76.00 feet to an iron pin; Thence north 32 deg. 37' East 53.38 feet to an iron pipe Thence North 5 deg. 31' East, 53.50 feet to an iron pipe in the South line of US Route 40 (West North St); Thence North 84 deg. 29' West along the South R/W line of US Route 40 (West North St), 75.00 feet to an iron pipe; Thence South 53 deg. 31' West 34.40 feet to an iron pipe, the place of beginning of this survey. Containing an area of 0.21 acres. Together With an easement for ingress and egress to be used in common by the Grantees, their heirs and assigns, and the Grantors, their heirs and assigns, and their respective licensees and invitees, over the follow described real estate:

Beginning at an iron pipe at the Northeast corner of the above described property and in the south line of US Route 40 (West North St). Thence South 84 deg. 29' east along and South line of US Route 40 (West North St), 45.00 feet to a park in concrete gutter; Thence South 45 deg. 35' West, 69.91 feet to an iron pipe; Thence North 5 Deg. 31' East, 53.50 feet To an iron pipe, the place of beginning Containing an area of 0.027 Acres.

Subject to all easements and restrictions of record.



BUSH VICTORIA & LOWELL	209 N THOMPSON AVI	SPRINGFIELD, OH 45504
BUSH VICTORIA & LOWELL	209 N THOMPSON AVI	SPRINGFIELD, OH 45504
DE ANGELIS PROPERTIES LLC	2723 RENSSELAER ST	SPRINGFIELD, OH 45503
FREMONT PROPERTIES INC	4186 CORUNNA RD	FLINT, MI 48532
GEER INVESTMENT PROPERTIES LLC	PO BOX 163216	COLUMBUS, OH 43216
HENSLEY CANDID S	1708 W NORTH ST	SPRINGFIELD, OH 45504
HUSTED ENTERPRISES LLC	239 HEDGE DR	SPRINGFIELD, OH 45504
KOEHLER RICHARD E & TERESA K	765 STONECROFT DR	SPRINGFIELD, OH 45502
ORGAN PAUL J	1630 W NORTH ST	SPRINGFIELD, OH 45504
PHOENIX PROPERTIES GROUP LLC	PO BOX 178	SPRINGFIELD, OH 45501
RICE ERIC D	3645 CALHOUN DR	SPRINGFIELD, OH 45505
VINLYN LLC	2643 CASEY DR	SPRINGFIELD, OH 45503
WAVES OF GLORY CHRISTIAN MINISTRIE	1720 W NORTH ST	SPRINGFIELD, OH 45504
WILSON THOMAS W	2266 BAINTER AVE	GROVE CITY, OH 43123





#21-A-03 & 04  
1717 W North St.



## STAFF REPORT

TO: Board of Zoning Appeals

DATE: January 14, 2021

PREPARED BY: Stephen Thompson

SUBJECT: Case #21-A-05

**GENERAL INFORMATION:**

Applicant:

James D Payton, 1853 Winding Trail, Springfield, OH  
45503

Owner:

James D Payton, 1853 Winding Trail, Springfield, OH  
45503

Purpose:

For a variance from Chapter 1135.27 to allow cargo containers permanently in a residential district

Location:

228 & 232 Selma Rd.

Size:

0.31 acre

### Existing Land Use and Zoning:

Automobile oriented, zoned RS-8

### Surrounding Land Use and Zoning:

North: Residential, RS-8  
East: Residential, RS-8  
South: Commercial, CC-2  
West: Residential, RS-8

Applicable Regulations:

Chapter 1172.06 Variances  
Chapter 1135.27(e) Cargo Containers

File Date:

December 15, 2020

**BACKGROUND:**

The applicant seeks a variance to keep cargo containers on site in a residential district. There are multiple containers on site. The containers were placed without obtaining any permits.

Chapter 1135.27(d) states “Cargo containers exceeding 120 square feet are allowed in residentially zoned districts only if in active use for the storage of construction materials for ongoing permitted construction, or for a maximum period of seven consecutive days in association with the relocation of the contents of a residential structure.

### ANALYSIS for Variance:



The Board may grant a variance only where there exists a “practical difficulty” as defined by the courts in Ohio in established case law. The Ohio Supreme Court’s decision in Kisil v. City of Sandusky, (1984) 12 Ohio State 3d 30, is a land mark decision in establishing common law governing variances by distinguishing between “use” and “area variances.” Area variances involve an exception from such requirements as yard, lot, and height standards. The Supreme Court established that a practical difficulty must exist before an area variance can be granted.

Then subsequent to this case, in Duncan v. Village of Middlefield, (1986) 23 Ohio 3d 83, the Ohio Supreme Court more fully explained the practical difficulty standards. The factors to be considered and weighed in determining whether a property owner seeking a variance has encountered a practical difficulty in the use of his/her property include, but are not limited to:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

***Staff Comment: Yes.***

2. Whether the variance is substantial;

***Staff Comment: Yes.***

3. Whether the essential character of the neighborhood will be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

***Staff Comment: No.***

4. Whether the variance would adversely affect the delivery of government services (e.g., water, sewer);

***Staff Comment: No.***

5. Whether the property owner purchased the property with the knowledge of the zoning restrictions;

***Staff Comment: No.***

6. Whether the property owner’s predicament can be obviated through some method other than a variance; or

***Staff Comment: No.***

7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

***Staff Comment: Yes.***

**RETURNED REPORTS FROM STAFF:**

Service/Engineering Department:	Recommend approval
Building Inspections:	Recommend approval as long as they meet State requirements for the containers
Engineering Division:	Recommend approval
Fire Department:	Recommend approval
City Manager's Office:	Recommend approval

**STAFF RECOMMENDATION:**

Approval of the variance.

**ATTACHMENTS:**

1. Vicinity and zoning map
2. Application

# **Agenda Item # 9**

**Case #20-A-05**

**Variance**

**FOR OFFICE USE ONLY**Case #: 21-4-05Date Received: 12/28/20Received by: STApplication Fee: \$ 255

Review Type:

☐ Admin ☐ CPB ☒ BZA**GENERAL APPLICATION****A. PROJECT**1. Application Type & Project Description (*attach additional information, if necessary*):

— For a variance to permit cargo containers for safe and secure storage of tires for tire sales  
and service business. i

2. Address of Subject Property: 228 and 232 Selma Rd., Springfield, OH 455053. Parcel ID Number(s): 340-07-00034-226-016340-07-00034-226-0154. Full legal description attached? ☒ yes ☐ no5. Size of subject property: 101.5 feet by 155 feet by 69.5 feet by 110 feet6. Current Use of Property: Tire Sales and Service7. Current Zoning of Property: Residential / COMMERCIAL**B. APPLICANT**1. Applicant's Status (*attach proof of ownership or agent authorization*) ☒ Owner☐ Agent (*agent authorization required*) ☐ Tenant (*agent authorization required*)

2. Name of Applicant(s) or Contact Person(s): \_\_\_\_\_

Title: James D. Payton

Company (if applicable): \_\_\_\_\_

Mailing address: 1853 Winding TrailCity: , Springfield, State: , OH ZIP: 45503Telephone: ( 937 ) 591-0523 Fax: ( ) \_\_\_\_\_

Email \_\_\_\_\_



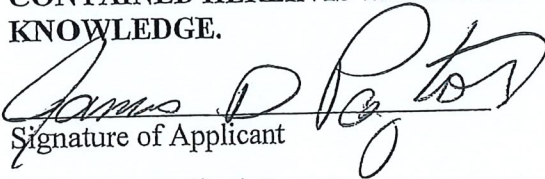
3. If the applicant is agent for the property owner:

Name of Owner (title holder): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP: \_\_\_\_\_

**I/WE CERTIFY AND ACKNOWLEDGE THAT THE INFORMATION  
CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY/OUR  
KNOWLEDGE.**



Signature of Applicant

James D. Payton

Typed or printed name and title of applicant

\_\_\_\_\_  
Signature of Co-applicant

\_\_\_\_\_  
Typed or printed name of co-applicant

State of Ohio

County of Clark

The foregoing instrument was acknowledged before me this 8th day of  
Dec, 2020

by James D. Payton :

\_\_\_\_ (name of person acknowledged).

(seal)



Notary Public Signature



MARK F. ROBERTS, Attorney At Law  
NOTARY PUBLIC, STATE OF OHIO  
My commission has no expiration date.  
Section 147.03 R.C.

My commission expires: \_\_\_\_\_



☒ Planning & Zoning

CITY OF SPRINGFIELD  
COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING & ZONING DIVISION

BOARD OF ZONING APPEALS APPLICATION

Date: December 8, 2020

Property address: 228 and 232 Selma Rd. Springfield, OH 45505

Requested Action: ☒ Conditional Use  
☐ Interpretation of the Zoning Code or Map  
☐ Change of a Nonconforming Use  
☐ Other

Section of the Zoning code applicable: SCO 1135.27(e)

Purpose of this request, including the improvements or physical changes proposed if this application is approved:

Continued use of cargo containers in excess of 120 square feet for safe and secure storage of tires.

Please include the following exhibits:

**Exhibit A**

A scale drawing with the dimensions of the property including existing and proposed buildings and their distances from lot lines, parking spaces, and adjoining streets and alleys. Please see example site plan. Additional copies may be required as needed.

Basis for the requested action: Substantiate the reasons why you feel the Board of Zoning Appeals should grant your request. Be specific. Use the space that follows (attach additional pages if necessary).

The cargo storage containers in use provide a much safer and secure way to store tires in contrast with leaving them stacked in the open. Use of the containers prevents water accumulation, which will deter mosquito breeding. Storing the tires in the containers of the size (40 feet by 8 feet) currently in use is more efficient, deters theft, vandalism and enhances fire prevention.

---

Signature: James D. Payton 12-8-20  
Applicant Date

Please Print Name: James D. Payton



EXHIBIT A - pg. 2 of 2 \* Location of 40 by 8 ft. Containers



December 3, 2020

1:564  
0 5 10 20 40 80 ft  
0 5 10 20 40 80 m

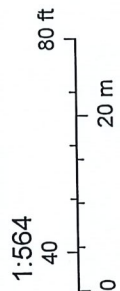
Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Clark County, Ohio  
Clark County GIS Department  
Copyright 2020 Clark County Ohio GIS.



# Clark County Ohio GIS



December 3, 2020



Source: Esri, Maxar, GeoEye, Earthstar, GeoGraphics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Clark County, Ohio  
Clark County GIS Department  
Copyright 2020 Clark County Ohio GIS.

EXHIBIT A, Pg. 282 - \* Locating 40 by 8 FT. CONCRETE





BK: 2035 PG: 1424

**APPROVED**

Clark County Tax Map

PH  
AUG 27 2014

- ☒ Legal Description  
☐ Survey Plat / Lotsplit  
☐ Subdivision / Annexation

Transferred
Sale Price <u>125,000</u>
2929 AUG 27 2014 Jy
John S. Federer Auditor

201400011388  
 Filed for Record in  
 CLARK COUNTY, OH  
 NANCY PENCE, RECORDER  
 08-27-2014 At 01:55 PM.  
 QUIT CLAIM 36.00  
 OR Volume 2035 Page 1424 - 1426

Recording requested by: Rodney E. Nier

Space above reserved for use by Recorder's Office

When recorded, mail to:

Document prepared by:

Name: James D PaytonName: Rodney E. NierAddress: 1853 winding trailAddress: 2841 S. tecumseh Rd.City/State/Zip: Springfield, OH 45503City/State/Zip: Springfield, OH 45502

Property Tax Parcel/Account Number: \_\_\_\_\_

**Quitclaim Deed**

This Quitclaim Deed is made on August 21, 2014, between  
Rodney E. Nier, Grantor, of 2841 S. tecumseh Rd.  
 \_\_\_\_\_, City of Springfield, State of OHio,  
 and James D Payton, Grantee, of 1853 winding trail  
 \_\_\_\_\_, City of Springfield, State of OHio 45503.

For valuable consideration, the Grantor hereby quitclaims and transfers all right, title, and interest held by  
 the Grantor in the following described real estate and improvements to the Grantee, and his or her heirs  
 and assigns, to have and hold forever, located at 228-232 Selma Rd.  
 \_\_\_\_\_, City of Springfield, State of OHio:

222 selma Rd. - Gilletts SE PT/732  
228 Selma Rd - Gilletts Smid. PT/732  
see Exhibit "A"

Subject to all easements, rights of way, protective covenants, and mineral reservations of record, if any.

Taxes for the tax year of 2013 shall be prorated between the Grantor and Grantee as of the date of  
 recording of this deed.

Quitclaim Deed Pg.1 (11-12)

201400011388  
 JAMES D PAYTON  
 HOLD



BK: 2035 PG: 1425

Dated: August 21, 2014

[Signature]  
Signature of Grantor

Rodney E. Nier  
Name of Grantor

[Signature]  
Signature of Witness #1

James D Payton  
Printed Name of Witness #1

[Signature]  
Signature of Witness #2

Brian C. Fike  
Printed Name of Witness #2

State of Ohio County of Clark

On Aug 21, 2014, the Grantor, Rodney E. Nier,  
personally came before me and, being duly sworn, did state and prove that he/she is the person described  
in the above document and that he/she signed the above document in my presence.

[Signature]  
Notary Signature Wilma D. Heick

Notary Public,

In and for the County of Clark State of Ohio

My commission expires: 3-31-2019

Send all tax statements to Grantee.



Quitclaim Deed Pg.2 (11-12)



BK: 2035 PG: 1426

Exhibit "A"

WITNESSETH:

That the Sellers agrees to sell and convey to the Buyer, and Buyer agrees to purchase  
from the Sellers, the following described real estate, with buildings and improvements thereon:

Situated in the City of Springfield, Ohio, County of Clark and State of Ohio  
and bounded and described as follows:

Being part of Lot Numbered Twenty (new number 732 ) as the same is  
numbered and designated on the Plat of lots laid out by Barkeley Gillett in  
addition to the City of Springfield. *as recorded in Plat  
Book 4, Page 19, Plat Records of Clark County*  
Beginning at a point on the north side of Clifton Street, now Selma Road, in  
said City of Springfield, where the west marginal line of Vine Street  
intersects the north marginal line of Clifton Street; running thence north with  
the west marginal line of Vine Street, 155 feet, more or less, to the southeast  
corner of the premises conveyed to Pern Laird and wife, recorded in Vol.  
262, Page 416, Deed Records of Clark County, Ohio; thence west with the  
south line of said Pern Laird, et al., to his southwest corner on a line of  
Emma Timmerman; thence south with the east line of said Emma  
Timmerman, et al., to the north line of Clifton Street (now Selma Road);  
thence southeasterly with the north line of Clifton Street 101 feet, more or  
less, to the place of beginning.

Subject to all legal highways, easements, restrictions and conditions of  
record.

PRIOR REF.: Vol. 738, Page 611, Deed Records of Clark County, Ohio.

ALASKA SEABOARD PARTNERS	323 FIFTH ST	EUREKA, CA 95501
ALASKA SEABOARD PARTNERS	323 FIFTH ST	EUREKA, CA 95501
ARBAUGH MICHAEL & SHARON	520 VINE ST	SPRINGFIELD, OH 45505
ARBUCKLE JODIE L	1041 CYPRESS ST	SPRINGFIELD, OH 45505
BOARD OF EDUCATION OF THE SPRINGFIELD	1500 W JEFFERSON ST	SPRINGFIELD, OH 45506
BURKHARD EDMUND C & SANDRA DRUKENMILLE	521 GALLAGHER ST	SPRINGFIELD, OH 45505
CITY FOREST OF SPRINGFIELD LIMITED	21600 OXNARD STREET STE 1201	WOODLAND HILLS, CA 91367
DOOLEY HERBERT G	2508 SUMMIT DR	SEBRING, FL 33870
DRUCKENMILLER S	519 GALLAGHER ST	SPRINGFIELD, OH 45505
FLORES SERGIO R VILLALPANDO	625 S BURNETT RD	SPRINGFIELD, OH 45505
HDL D LLC	2508 SUMMIT DR	SEBRING, FL 33870
JOY JOSEPH	516 VINE ST	SPRINGFIELD, OH 45505
LEMLEY CHARLES	732 EAST ST	SPRINGFIELD, OH 45505
LYONS WILLARD J	530 VINE ST	SPRINGFIELD, OH 45505
MAYNARD PATRICK & CHEYANNE YOUNG	623 OLIVE ST	SPRINGFIELD, OH 45503
MILTON CHARLES	207 E PLEASANT ST	SPRINGFIELD, OH 45505
MONGOLD GLORIA JEAN & SHON	816 RODGERS DR	SPRINGFIELD, OH 45503
MURRAY BLANCHE E TRUSTEE	4616 TULANE RD	SPRINGFIELD, OH 45503
NELSON DAVID	1648 S BURNETT RD	SPRINGFIELD, OH 45505
PAYTON JAMES D	1853 WINDING TRAIL	SPRINGFIELD, OH 45503
SELMA ROAD WHOLESALERS LLC	4103 E NATIONAL RD	SPRINGFIELD, OH 45503
SPRIGGS RONALD D	516 S SPRING ST	SPRINGFIELD, OH 45505
THOMAS PEARL E & FLORENCE J	532 VINE ST	SPRINGFIELD, OH 45505
THOROUGHMAN FAVON & SHAWN NYA	419 FAIRWAY DR	FAIRBORN, OH 45324
TRUMBULL DAVID B	2647 CRAIG RD	SPRINGFIELD, OH 45502
WELCH DAVID G	205 S BROADMOOR BLVD	SPRINGFIELD, OH 45504

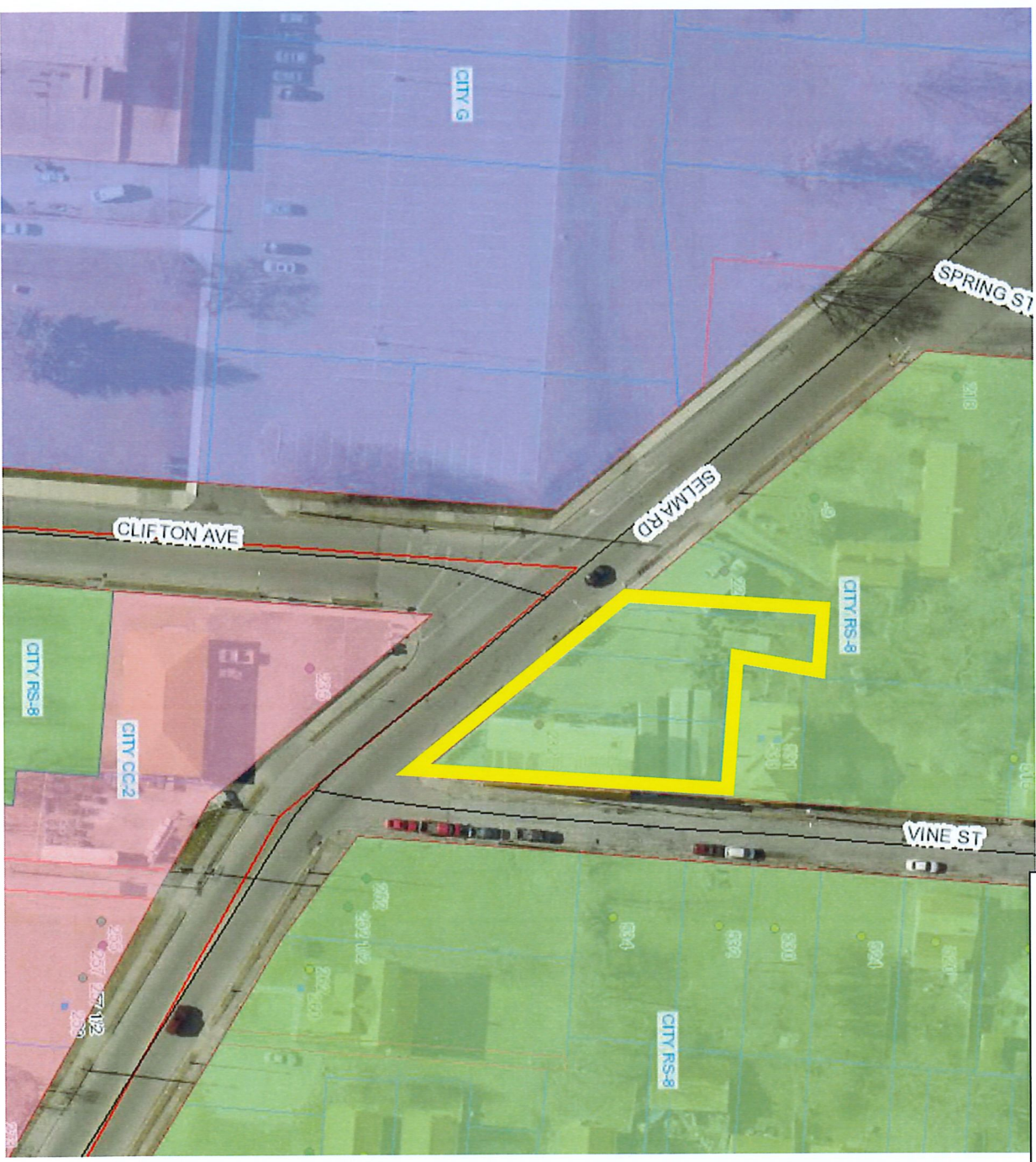




#21-A-05  
232 Selma Rd.



#21-A-05  
232 Selma Rd.



**2020 BOARD OF ZONING APPEALS ATTENDANCE**

BOARD MEMBERS		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
		22	19	16	20	18	15	20	17	21	19	16	21
Dori Gaier Reso. 6048	5-11-2019 5-11-2012	P	A	n/a	n/a	n/a	n/a	P	P	n/a	P	P	A
Denise Williams Reso. 6059	8-03-2019 8-03-2022	P	A	n/a	n/a	n/a	n/a	P	P	n/a	P	A	P
Matthew Ryan Reso. 5839	7-28-2020 8-11-2023	P	P	n/a	n/a	n/a	n/a	A	P	n/a	P	P	P
Mark Brown Reso. 5869	1-20-2018 3-13-2021	P	P	n/a	n/a	n/a	n/a	P	P	n/a	P	P	P
James Burkhardt Reso. 5880	4-01-2018 3-31-2021	A	P	n/a	n/a	n/a	n/a	P	P	n/a	P	P	P
Rhonda Zimmers Reso. 5914	1-5-2019 1-06-2022	A	P	n/a	n/a	n/a	n/a	P	P	n/a	P	P	P
Charles Harris Reso. 6069	11-26-2019 3-26-2022	P	P	n/a	n/a	n/a	n/a	P	A	n/a	P	A	P

NOTE: The first date shown is the original appointment/reappointment date. The second date represents the most recent term's expiration.  
The City Commission Resolution is also listed.



Planning & Zoning

**CITY OF SPRINGFIELD**  
COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING AND ZONING DIVISION

**City Planning Board**

**Regular Meeting - First Monday following the First Tuesday of the Month**  
**7:00 P.M. - City Forum, City Hall, 76 E. High St., Springfield, Ohio**

**City Planning Board**  
**Meeting Date:**

January 11, 2021  
February 8, 2021  
March 8, 2021  
April 12, 2021  
May 10, 2021  
June 7, 2021  
July 12, 2021  
August 9, 2021  
September 13, 2021  
October 11, 2021  
November 8, 2021  
December 13, 2021

**Lotsplit Variance,  
Rezoning, and Final  
Subdivision  
Application  
Deadline:**

December 21, 2020  
January 15, 2021  
February 12, 2021  
March 22, 2021  
April 19, 2021  
May 17, 2021  
June 21, 2021  
July 19, 2021  
August 23, 2021  
September 20, 2021  
October 18, 2021  
November 22, 2021

**Board of Zoning Appeals**

**Regular Meeting-Third Monday of the Month**  
**7:00 P.M.- City Forum, City Hall, 76 E. High St., Springfield, Ohio**

**Board of Zoning**

January 20, 2021 \*  
February 17, 2021 \*  
March 15, 2021  
April 19, 2021  
May 17, 2021  
June 21, 2021  
July 19, 2021  
August 16, 2021  
September 20, 2021  
October 18, 2021  
November 15, 2021  
December 20, 2021

**Application Deadline:**

December 28, 2020  
January 25, 2021  
February 22, 2021  
March 29, 2021  
April 26, 2021  
May 28, 2021  
June 28, 2021  
July 26, 2021  
August 30, 2021  
September 27, 2021  
October 25, 2021  
November 29, 2021

\* Denotes meeting day changed to Wednesday due to holiday.

Effective Date: December 2020

Prepared by the Planning and Zoning Division



# 2021 CITY COMMISSION CALENDAR

JANUARY 2021						
Su	M	Tu	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

MARCH 2021						
Su	M	Tu	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31		Retreat	

MAY 2021						
Su	M	Tu	W	Th	F	Sa
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31				Election Day	

JULY 2021						
Su	M	Tu	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

SEPTEMBER 2021						
Su	M	Tu	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

NOVEMBER 2021						
Su	M	Tu	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	Budget Mtgs		Election Day	

FEBRUARY 2021						
Su	M	Tu	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28						

APRIL 2021						
Su	M	Tu	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

JUNE 2021						
Su	M	Tu	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

AUGUST 2021						
Su	M	Tu	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

OCTOBER 2021						
Su	M	Tu	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

DECEMBER 2021						
Su	M	Tu	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	